TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1939

No. 500

STATE OF MINNESOTA, PETITIONER,

vs.

NATIONAL TEA COMPANY AND ALLIED STORES CORPORATION (FORMERLY HAHN DEPARTMENT STORES, INCORPORATED)

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

PETITION FOR CERTIORARI FILED NOVEMBER 3, 1939.

CERTIORARI GRANTED DECEMBER 11, 1939.

SUPREME COURT OF THE UNITED STATES

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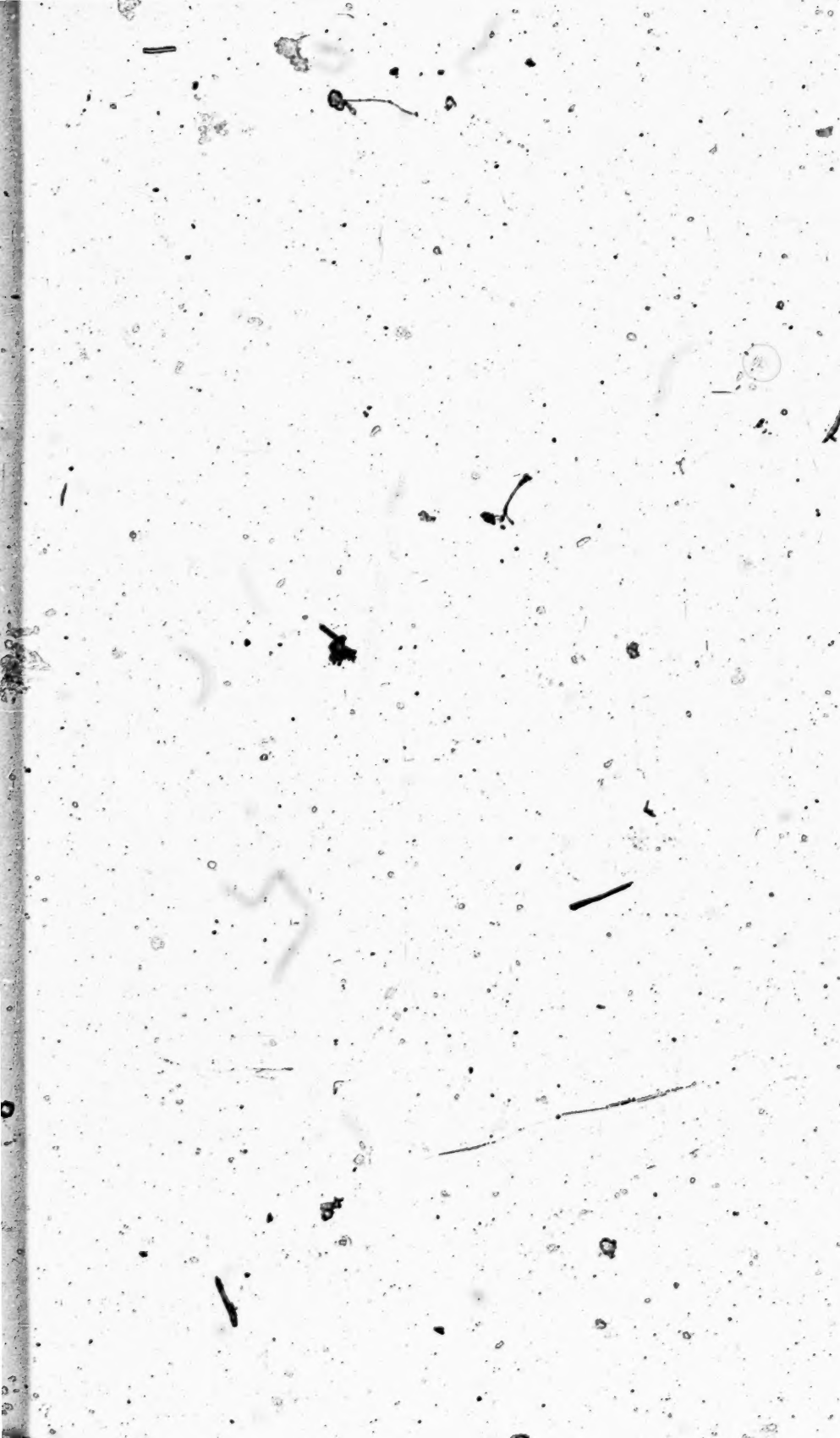

[fol. 1]

IN DISTRICT COURT OF RAMSEY COUNTY, SECOND JUDICIAL DISTRICT, STATE OF MINNESOTA

NATIONAL TEA COMPANY, Plaintiff,

vs.

STATE OF MINNESOTA, Defendant

COMPLAINT

Plaintiff for its complaint against the defendant alleges:

I

The legislature of the State of Minnesota, at its session of 1933, enacted a statute entitled "An Act raising revenues, imposing a tax on conducting business by the system of chain stores for selling or otherwise disposing of goods, wares, articles or commodities at retail, with certain exceptions providing for the assessment and collection thereof, and for the distribution of the proceeds therefrom, providing penalties for failure to pay such tax, defining certain crimes in connection with the enforcement of such tax, and [fol. 2] appropriating money for the administration of this Act." The Act was approved by the Governor of the State on April 12, 1933, and is known as Chapter 213 of the Laws of Minnesota for 1933. The Act purports to impose upon all who are engaged within the State in conducting a business by the so-called system of chain stores (as defined by the Act), from any of which are sold at retail any goods, wares, and merchandise, an annual tax computed on two bases and consisting of, first, a specific tax per store (which will be referred to herein as the specific tax) and, second, a gross sales tax (which will be referred to herein as the gross sales tax), both graduated as hereinafter set out.

The Act provides that the specific store tax shall be determined as follows:

$5 for each store in excess of 1 and not in excess of 10;
$15 for each store in excess of 10 and not in excess of 20;
$35 for each store in excess of 20 and not in excess of 30;
$65 for each store in excess of 30 and not in excess of 40;

$105 for each store in excess of 40 and not in excess of 50;
$155 for each store in excess of 50.

The gross sales tax is imposed at the following rates on the combined gross sales of each taxable person, subject to exemption of sales of the products mentioned in the next [fol. 3] following paragraph:

1/20 of 1% on gross sales up to $100,000;
2/20 of 1% on gross sales in excess of $100,000 up to $200,000;
3/20 of 1% on gross sales in excess of $200,000 up to $300,000;
4/20 of 1% on gross sales in excess of $300,000 up to $400,000;
5/20 of 1% on gross sales in excess of $400,000 up to $500,000;
6/20 of 1% on gross sales in excess of $500,000 up to $600,000;
8/20 of 1% on gross sales in excess of $600,000 up to $700,000;
10/20 of 1% on gross sales in excess of $700,000 up to $800,000;
12/20 of 1% on gross sales in excess of $800,000 up to $900,000;
15/20 of 1% on gross sales in excess of $900,000 up to $1,000,000;
1% on gross sales in excess of $1,000,000.

There is excepted from the application of the Act persons conducting chain stores for the sale at retail of one or more of the following:

"Fuel, lumber, building material, gasoline and oils, and grain, if the gross sales of any such person from such produce or products shall, during any year for which the tax is imposed, equal or exceed 95 per centum of the total gross sales from all sources of any such person."

[fol. 4] There is also excepted "cooperative associations organized under the laws of this State in good faith and not for the purpose or with the intent of evading the tax hereby imposed."

Each taxable person is permitted an exemption of one store of his own selection.

The taxes imposed by the Act are not in lieu of any other tax or form of taxation, but those within the terms of the Act are subject to this tax in addition to every other form of tax for which they were liable prior to the passage of the Act, including every other form of tax imposed upon those engaged in retail business within the State to whom the present tax does not apply.

Said act was not adopted by the legislature in the exercise of the police power of the State. It does not purport to establish any standard of conduct for the business affected, and does not deal with nor affect any matter relating to public health, welfare, safety, or morals, nor provide for any supervision or inspection in relation thereto, and does not purport to be and is not in any aspect a police measure or regulation.

The business of selling at retail by the system of chain stores is not a proper subject of police regulation, and in any event is no more subject to and no more requires such regulation than the business of selling at retail otherwise than by the system of chain stores. The former is not in a class distinguishable from the latter for the purpose of the imposition of license fees or taxes.

The conduct of retail business by the system of chain stores as carried on in the State of Minnesota is not adverse [fol. 5] or inimical to any interest of the people of the State, and does not in any manner or degree threaten or endanger the public health, safety, morals, or general welfare. On the contrary, the conduct of such business is to the great economic advantage of the people of the State.

Said Act was adopted as and purports to be a taxation for revenue measure only.

The text of said Act in full is set forth in Exhibit A hereto attached and is hereby made a part hereof.

Said Act was amended at an extra session of the legislature of said State held in 1933-1934. Said amendment became effective December 23, 1933, and is known as Chapter 16 of the laws adopted at said extra session. The text of said amendment is set forth in Exhibit B hereto attached and is hereby made a part hereof. References herein to the "Act" are to the Act as so amended.

In using herein the terms "chain stores", "system of chain stores", and "persons", the language of the Act is adopted, and the terms are used with the meaning as defined therein.

II

Plaintiff is a corporation organized under the laws of the State of Delaware, and is and for many years has been engaged in the State of Minnesota in conducting a retail grocery business by the system of chain stores as defined by said Act, and if said Act be valid is subject to the tax [fol. 6] thereby imposed. It has paid, under the facts and circumstances hereinafter alleged, a specific tax for the last half of the year 1933 in the sum of $19,760.00, with interest in the sum of $1,194.90, and a specific tax for the year 1934 in the sum of $16,505.00, and a gross sales tax for the last half of the year 1933 in the sum of $21,877.67, making a total sum so paid of $59,337.57.

III

The said Act, as plaintiff alleges, is null and void on its face, and especially by reason of the facts hereinafter alleged, because

(1) It is in violation of Article 1, Section 2, of the Constitution of the State of Minnesota, in respect of the provision thereof that "no member of this State shall be . . . deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers";

(2) It is in violation of Article 1, Section 7, of the Constitution of said State, in respect of the provision thereof that "no person shall be deprived of life, liberty, or property without due process of law";

(3) It is in violation of Article 4, Section 34, of the Constitution of said State, in respect of the provision thereof that all general laws "shall be uniform in their operation throughout the State";

(4) It is in violation of Article 9, Section 1, of the Constitution of said State, in respect of the provision thereof that "taxes shall be uniform upon the same class of subjects";

[fol. 7] (5) It is in violation of Article XIV, Section 1, of Amendments to the Constitution of the United States in respect of the provision thereof that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State

deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.'"

IV

The tax imposed by the Act is not uniform in its operation throughout the State, and is not uniform on the same class of subjects, but rests upon a classification of subjects that is arbitrary, unreasonable, and discriminatory, and which bears no relation to any valid or legitimate purpose of this or any taxing act. By means of such classification the Act seeks to, and if enforced would, tax plaintiff and others coming within the scope of its terms, while exempting other subjects within the same taxable class but without the scope of its terms or expressly exempted. It seeks to, and if enforced would, impose the prescribed tax upon some conducting business at retail by the system of chain stores, such as the plaintiff, and exempt others likewise engaged in conducting business at retail by the system of chain stores. It purports to be a privilege or occupation tax, but applies to some and excludes others in the same occupation and exercising the same privilege. In the practical operation [fol. 8] and effect of the Act the amount of the tax bears no relation, either absolute or relative, to the value of the privilege for which the tax is exacted, and bears unequally and discriminately upon those to whom the Act applies, by reason, among others, of the great differences in the relative value of the privileges by them exercised for which the tax is imposed and by reason of great differences in ability to bear the burden of the tax. The tax is imposed at different and discriminatory rates on members of the same taxable class, arbitrarily varied and graduated, without any reasonable or justifying basis for such differences in rates. While the Act purports to impose an occupation or privilege tax, the amount thereof as to plaintiff and many subject thereto is so oppressively excessive as to consume all profits which it is possible to derive from the operation of their business in the State, and the Act would therefore render the continued operation of such businesses impossible and would destroy the very occupation and privilege for the enjoyment of which the tax is exacted, and would under the guise of taxation confiscate the property and destroy the property rights of plaintiff and others.

V

In the year 1929 (at the time of the taking by the Federal Government of the Fifteenth Decennial Census) there were engaged in selling at retail in the State of Minnesota (a) chain store owners; (b) single store owners who were asso- [fol. 9] ciated together in so-called "voluntary chains," and (c) single store owners not so associated. The total number of retail stores in that year operated in Minnesota was 30,725, of which 4,174 were chain stores and 26,551 were single owned stores. Of the chain stores 810 were included in chains having two stores each and 286 were included in chains having three stores each. Only 769 stores were included in so-called "national chains." The total volume of sales in that year made by all chain stores in the State was 16.22 per cent of the whole, of which 7.72 per cent of the whole was made by two and three store chains and 5.22 per cent was made by so-called "national chains." The proportions as to classes of stores and volume of sales obtaining since 1929 have not varied greatly from those of 1929. The so-called "voluntary chains" consist of groups of single retail store owners associated together (either with or without a wholesaler associate) mainly for the purposes of cooperative buying, cooperative advertising, and group control of store operations. In 1932 7,830 single owned stores in the State were included in such "voluntary chains," which number, as plaintiff is informed and believes, has since increased.

The chains consisting of two or three stores in the State, of which there are more than one thousand in number, are for the most part operated by persons of small means and with very limited capital, and transact a relatively small volume of business. The great majority of such chains are owned and operated by individuals and copartnerships [fol. 10] rather than by corporations. Such chains are far outnumbered by single stores doing a much larger business and having much larger buying power and much larger capital invested and available.

VI

There are engaged in the State of Minnesota various and sundry persons in retail business by the chain store system, consisting, to the extent of more than ninety-five (95) per cent of total gross sales, of the sale of the following com-

modities, in some cases limited to one such commodity and in others combining two or more of such commodities, viz: fuel, lumber, building material, gasoline and oils, and grains, and such persons are engaged in such business in competition with others selling the same commodities at retail by the chain store system, but whose sales of such commodities, although large, do not equal ninety-five (95) per cent of the total gross sales of such persons. The business of both groups in the State is large and extensive. The classification contained in the Act (Sec. 1 (b)), whereby the specific tax is imposed upon the last named group of persons, and generally upon persons operating chain stores, but which exempts the first mentioned group from such tax, is based upon no difference germane to the purpose of the Act, and is unreasonable, arbitrary, and discriminatory.

VII

Various and sundry cooperative associations organized under the laws of Minnesota (in good faith and not for the [fol. 11] purpose or with the intent of evading the tax imposed by the Act) are engaged in Minnesota in the sale, at retail, by the chain store system, of the same products and commodities as are sold by the plaintiff and other chain store owners and in competition with them and under substantially the same conditions. The classification provided in the Act (Sec. 1 (b)), which excludes such associations from the tax but includes plaintiff and others operating retail chain stores, is without basis, unreasonable, arbitrary, and discriminatory.

VIII

The provision of Section 2 (a) which in effect excludes from the specific tax one store of each person subject to the Act and the provision of Section 4 which exempts from the gross sales tax sales from one store to be selected by each person subject to the Act, without reference to the volume of business transacted at or the amount of gross sales or profits derived from the operation of such excluded or exempted store, or other circumstances affecting the absolute or relative importance of such store or the extent to which the amount of tax otherwise payable would be affected by such exemption, renders the operation of the Act discriminatory in respect to the relative burden thereof

upon those to whom the Act applies. It is particularly unreasonable and discriminatory as between persons conducting a small number of large retail stores (of which there are many in the State) and those in competition with such [fol. 12] persons (such as plaintiff and others) who conduct a large number of small retail stores, exempting as it does from the tax a large percentage of the gross sales of the former but only a small percentage of the gross sales of the latter.

Certain large national chains having many retail stores in many states, and doing a large business in this State, are entirely excluded from the application of the Act by reason of the fact that their Minnesota business is transacted at one store only.

IX

The amount of the specific tax is computed solely on the basis of the number of stores under a single or common ownership, supervision, or management on July 1 of each tax year, the amount of the tax being the same whether the store or stores taken as the basis of the tax be owned and operated for one day or for three hundred and sixty-five days or for any intermediate number of days during the tax year, thus discriminating against the person owning and operating chain stores or the maximum number of chain stores on July 1 and in favor of the person acquiring such stores after July 1, who may thereafter continue to operate such stores free from the specific tax unless and until he owns and operates such stores on July 1 of the following year.

X

Although the amount of the specific tax is made to depend [fol. 13] solely on the number of stores owned and operated on July 1 of each tax year, payment of the tax is required to be made on January 20 of the same tax year. Thus the Act seeks to impose and require payment of the specific tax at a time when the amount thereof and liability therefor are impossible of determination.

XI

Many different kinds of retail business are carried on in the State of Minnesota under the chain store system. In keeping with the nature of the business and the requirements

for successful operation, these different kinds of business are carried on in stores varying widely in size and individual importance. Some of such kinds of business (e.g. the retail grocery business) are generally carried on in relatively small stores widely distributed over urban areas, while others are carried on mainly in large stores located in business centers. Characteristically, the volume of business and profit per store are relatively small in the case of chains engaged in some lines of retail business and relatively large in the case of chains engaged in other lines. Correspondingly the value of the privilege of operation per store is small and the burden of the specific tax is heavy in the case of the former, while relatively the value of the privilege is large and the burden of the tax is light in the case of the latter.

The Federal Trade Commission of the United States made an extensive study of retail chain store sales and profits for [fol. 14] the years 1913, 1919, 1922, 1925, 1927, 1928, 1929, and 1930, and found that the average annual gross sales and average annual net profits per store for twenty-six different kinds of chain store retail business were as follows:

	Average Gross Sales Per Store Per Year	Average Net Profits Per Store Per Year
Variety (unlimited)	$41,951	$96
Hats and caps	42,386	–189
Variety ($5 limit)	43,684	1,260
Grocery	45,387	956
Women's accessories	52,593	1,411
Millinery	55,168	1,302
Men's furnishings	55,444	416
Grocery and meat	55,742	1,568
Men's shoes	56,036	2,598
Tobacco	66,485	1,785
Men and women's shoes	70,856	2,248
Hardware	73,391	2,376
Meat	74,567	1,824
Dry Goods	79,254	915
General merchandise	97,229	3,554
Women's shoes	97,821	3,376
Men and women's ready-to-wear	98,390	8,700
Drugs	117,809	4,957

	Average Gross Sales Per Store Per Year	Average Net Profits Per Store Per Year
Confectionery	$117,923	$7,116
Dry goods and apparel	142,379	8,442
Men's ready-to-wear	163,210	3,898
Variety ($1 limit)	171,556	15,712
Women's ready-to-wear	191,463	8,337
Musical instruments	208,930	3,295
Furniture	308,111	35,321
Department store	1,671,815	74,360

[fol. 15] Upon information and belief plaintiff alleges that the findings of the Federal Trade Commission as above set forth are substantially in accordance with the facts, and that while the trend of average gross sales and net profits per store was downward during the period in question and such averages are now generally much lower, yet the relation between the averages for the different lines of business has not greatly varied, and that the averages for the State of Minnesota approximate the general averages. That all of said kinds of business are carried on in the state by chain store systems.

Thus it appears that by comparison with the average net profits per store for the grocery business, the average for the hardware business is approximately two and one-half times as great, for the drug business over five times as great, for the confectionery business more than seven times as great, for the dry goods and apparel business more than eight and one-half times as great, for variety stores ($1.00 limit) over sixteen times as great, for the furniture business approximately thirty-seven times as great, and for department stores over one thousand seven hundred forty-eight times as great.

The disparity in the burden of the specific tax is accentuated by the fact that many lines of retail business (e. g. the grocery business) in which small stores predominate are among those which operate on the smallest margin of profit as compared with gross sales.

The inequality and discrimination between chain store [fol. 16] systems resulting from the enforcement of the spe-

cific tax feature of the Act may be illustrated by comparison between the tax burden laid upon plaintiff as contrasted with the tax placed upon a chain department store system operating two retail stores in Minnesota, each having a grocery department in competition with plaintiff.

The total gross sales of plaintiff in Minnesota for 1933 were $5,733,560.94. Excluding the store selected for exemption, they were $5,647,974.08, or an average of $34,650.00 per store. The total gross sales of a department store system from two stores operated in the state were in excess of $9,700,000. Excluding its exempt store, the gross sales were approximately $4,900,000. Plaintiff's specific tax was $19,760 for one hundred sixty-two unexempt stores, or an average of $121.97 per store. The department store's specific tax was $5.00. Although plaintiff's unexempt stores in size as measured by volume of gross sales were on the average but seven-tenths of one per cent of the size of the non-exempt department store, plaintiff's tax rate per store was twenty-four times as large, and while plaintiff's total sales from unexempt stores were less than 16 per cent larger than the sales from the unexempt department store, plaintiff's specific tax was three thousand nine hundred fifty-one times as great as that of the department store system.

Discriminations and inequalities between chain store systems generally similar in character and of various degrees pervade the whole extent of the application of the specific tax.

[fol. 17] The discriminations and inequalities resulting from disregard of size, character, and importance of stores as an element affecting the rate or amount of the tax per store is greatly enhanced by the graduation of the rate (under Section 2(a) of the Act), whereby persons subject to the tax are in effect subclassified solely according to the number of store units operated by each. An increase in the number of units in a chain is not usually accompanied by any expansion in size of units. The tendency is rather to the contrary. The same economic needs and forces which tend to multiply units in certain lines of business also tend to restrict the size of the units to small or moderate limits.

The Federal Trade Commission, in the study hereinbefore referred to, found the average volume of sales per store per year in relation to the number of stores per chain,

all kinds combined, to be as follows, such finding being substantially accurate;

	Number of Stores Per Chain							
Average gross sales per store per year,	2 to 5.	6 to 10.	11 to 25.	26 to 50.	51 to 100.	100 to 500.	501 to 1000.	1001 and over.
	292,671	309,995	123,376	93,791	70,170	96,178	74,687	63,692

That the size of stores tends to run inversely to the number in a chain is a circumstance which accentuates the discrimination against small stores which attends the rapidly increasing upward progression of rates. The rate of tax in respect of each store, regardless of size, in excess of twenty up to thirty included in any chain is seven times [fol. 18] the rate in respect of each store up to ten in number, and the rate in respect of each store from forty-one up to fifty is seventy-one times the rate in respect of each store up to ten. The average rate per store paid by plaintiff for the year 1933 on account of one hundred sixty-three stores was more than twenty-four times the rate payable by a person operating not more than ten stores in the state.

The imposition of a privilege tax the amount of which is governed solely by the number of stores operated by a single person and which gives no consideration to the character, size or importance of stores or the value of the privilege of operating them, particularly when the rates, as in the case of the act here in question, are graduated sharply upward, depending upon nothing but mere number of stores in a chain, can have no just relation to the purpose of the Act; and of necessity must operate to unequally distribute the burden of the tax as between those enjoying the same advantages and exercising the same privileges and to deny to plaintiff and others subject to the Act the right to have taxes applying to them laid uniformly upon the same class of subjects.

XII

The basing of rates upon gross sales as under Section 2 (b) of the Act naturally and inevitably produces further inequalities and discriminations between persons subject to the Act. This again is a privilege tax which disregards the [fol. 19] the real factors which determine both the value of the privilege and the burden of the tax, such as net earnings or profits and ability to pay. In the field of retail chain

store operations rates of profit in terms of percentages of gross sales for different kinds of business cover an extremely wide range. The studies of the Federal Trade Commission previously referred to disclose the average rate of net profits to gross sales for retail chains in the twenty-six lines of business covered by the study to be as follows:

Net Profit in Percentage of Gross Sales

Hats and caps	(Loss) .42
Variety (unlimited)	.23
Men's furnishings	.75
Dry goods	1.15
Musical instruments	1.58
Grocery	2.10
Millinery	2.36
Men's ready-to-wear	2.39
Meat	2.45
Tobacco	2.68
Women's accessories	2.69
Groceries and meat	2.82
Variety ($5 limit)	2.88
Men and women's shoes	3.17
Hardware	3.24
Women's shoes	3.45
General merchandise	3.66
Drugs	4.21
Women's ready-to-wear	4.35
[fol. 20] Department store	4.45
Men's shoes	4.64
Dry goods and apparel	5.93
Confectionery	6.04
Men and women's ready-to-wear	8.84
Variety ($1 limit)	9.16
Furniture	11.46

Upon information and belief plaintiff alleges that while the trend of profit ratios for all but four of said lines of business was downward during the period covered by the study, and the ratios are generally much lower now, the relation between the ratios has remained in general the same, and that approximately the same relation between the ratios obtains now in the State of Minnesota and elsewhere in the United States.

Thus it appears that as compared with the grocery business the rate of profit in relation to gross sales for the hardware business is more than fifty per cent higher, for the drug and department store business is twice as great, for the dry goods and apparel business over two and one-half times as great, for the confectionery business nearly three times as great, for the men and women's ready-to-wear clothing business more than four times as great, for variety stores ($1.00 limit) nearly four and one-half times as great, and for the furniture business approximately five and one-half times as great.

Had the gross sales tax applied to gross sales for the entire year 1933, the average rate payable by plaintiff would have been .8657 per cent. For the purpose of illustrating [fol. 21] the practical effect of the Act, let it be assumed that the profit ratios found by the Federal Trade Commission prevailed in Minnesota in 1933 and that the retail chains engaged in the kinds of business below mentioned each had a volume of sales in the state equal to that of plaintiff so as to be subject to the same tax rates. The result would be that the tax (gross sales alone) for the year would absorb the following portions (disregarding fractions of one per cent) of the net profits derived from such sales of chains engaged in the following lines of business, viz.:

Furniture	7%
Variety ($1 limit)	9%
Men and women's ready-to-wear	9%
Confectionery	14%
Dry goods and apparel	14%
Drugs	20%
Hardware	25%
Groceries	41%
Musical instruments	54%
Dry goods	75%
Men's furnishings	116%
Variety (unlimited)	378%

In actual operation the gross sales tax consumes a relatively larger share of plaintiff's profits, compared with chains in other lines of business, than indicated by the illustration, for the reason that the plaintiff has a larger than average volume of business in the state, and therefore is subject to higher than average rates of tax.

Also the fact is that the average profit ratio of plaintiff [fol. 22] and other grocery chains on Minnesota business has been for many years far below 2.1 per cent, the average used in the illustration as applying to grocery chains.

Any tax based upon gross sales which establishes the same schedule of rates for all lines of chain store business, regardless of the relation between gross sales and profits, must of necessity create great inequality of tax burden and give rise to gross discrimination in its practical application. Under the rates established by the present Act the burden upon the plaintiff is oppressively onerous, while as to other retail chain store systems enjoying all the advantages and privileges of plaintiff but doing business on a high ratio of profit the burden is comparatively light.

The discriminations resulting from adopting gross sales as the sole basis of the tax are greatly magnified by the graduation of the rates, the effect of which is to subclassify chain store systems according to the volume of their gross sales. The rates and amounts ascend in rapid progression. Thus, as compared with the rate applicable to annual gross sales of $100,000 or less, the rate as to annual gross sales in excess of $500,000 up to $600,000 is six times as great, and the rate as to annual gross sales in excess of $1,000,000 is twenty times as great. As compared with the tax of a person having annual gross sales of $100,000, a person having annual gross sales ten times that amount ($1,000,000) pays a tax twenty-six times as great, and a person having sales fifty times that amount ($5,000,000) pays a tax eight [fol. 23] hundred sixty times as great. If the gross sales tax had applied to the entire year 1933, plaintiff's average rate on $5,735,560.94 of gross sales would have been seventeen times the rate of a taxpayer having gross sales for the year of $100,000.

Such graduation of rates in conjunction with the fact that the basic rates are based upon gross sales only operates to exact from plaintiff an amount of tax out of all proportion to the tax paid by others under the Act and out of all proportion to the value of the privilege which is the basis of the imposition.

Up to certain moderate limits, increase in volume of gross sales may tend to increase the rate of profit, but the rate of increase is insignificant in comparison with the rate of increase of the gross sales tax rates, and the rate of increase of profit for any given chain reaches its maximum

at gross sales far under $1,000,000 per annum. Beyond such limit profits, compared with gross sales, increase only in a simple arithmetical ratio.

That large chains have by reason of size alone no advantages over small or moderate sized chains in the matter of profit ratios is shown by the Federal Trade Commission findings before referred to. There was no determination by the Commission as to profit ratios according to volume of sales, but it was found that according to the number of stores per retail chain the average ratio of profits to gross sales for all chains combined was as follows, such finding being substantially accurate:

[fol. 24]

	Number of Stores Per Chain							
	2 to 5.	6 to 10.	11 to 25.	26 to 50.	51 to 100.	101 to 500.	501 to 1000.	1001 and over.
Average profit ratio.	4.86	4.26	3.67	3.53	3.06	5.65	4.39	4.23

The relatively high percentage in the 101 to 500 store division is accounted for by the high ratio in that division of three particular lines of business.

This tabulation negatives any supposition that profit ratios generally increase with size of claims.

The subclassification of chain stores by volume of gross sales is justified by no basis in fact. There is no corresponding difference between chains in point of profits, ability to pay, value of privilege, or other factual element relevant to a privilege taxing act. Not only does the imposition of the tax rest upon baseless classification but also there is arbitrary discrimination in treatment as between those falling within each separate class.

XIII

The discriminatory and oppressive character of the Act is more fully demonstrated by the combined effect of the two (specific store and gross sales) forms of tax.

Plaintiff's specific tax for the year 1933 equalled .3447 per cent of its gross sales in the state for that year. Had the gross sales tax been in effect for the entire year, the amount would have equalled .8657 per cent of plaintiff's gross sales, and both taxes combined would have equalled 1.2102 per cent of plaintiff's gross sales in the state for the year.

[fol. 25] If the Act had been in effect and had applied to plaintiff during the five years from 1925 to 1929, inclusive, plaintiff's tax would have equalled 1,2909 per cent of its gross sales in the state, and during said period, notwithstanding it was one of unusual prosperity, the Act, if in force, would have absorbed 71.72 per cent of all net profits derived by the plaintiff from its business in the state.

Plaintiff's business in the state has always been conducted efficiently, at least as efficiently and under as favorable conditions as the average business of the same kind in the state. During the five-year period from 1925 to 1929, inclusive, the average ratio of plaintiff's net profits to gross sales in the state was 1.64 per cent. During the four years from 1930 to 1933, inclusive, there was on the plaintiff's business in the State an average net loss ratio to gross sales of 1.3076 per cent. Plaintiff is informed and believes, and therefore alleges, that its profit and loss experience is fairly representative of the profit and loss experience of other chain store systems engaged in the same general kind of business in the State during the same periods of time.

Plaintiff alleges that at present and as far as can be foreseen there is no prospect or reasonable ground to estimate or believe that the average margin of net profit in the chain store retail grocery business in the State will in the future exceed 1.21 per cent, and plaintiff alleges that it will be impossible in the future for it or the average chain store retail grocery system to discharge the burden of said tax and continue to operate at a profit.

[fol. 26] XIV

The result of the actual administration of the Act confirms and strengthens the allegations made herein as to the arbitrary, discriminatory and oppressive character of the tax imposed as applied to plaintiff and others. The total amounts of the taxes paid and collected under the Act up to July 1, 1934 (since which date no substantial additional amount, if any, has been paid or collected) were as follows:

Specific tax for last half of 1933	$42,425.00
Specific tax for 1934	39,670.00
Gross sales tax for last half of 1933	137,234.32
Total	$219,329.32

Of these amounts plaintiff paid as follows:

Specific tax for last half of 1933	$19,760.00
Specific tax for 1934	16,505.00
Gross sales tax for last half of 1933	21,877.67
Total	$58,142.67

Plaintiff during the year 1933, as it is informed and believes, did less than 4.3 per cent of the chain store retail business transacted in Minnesota, and its profits on its business transacted in the State have always been less than 4.3 per cent of the total profits from retail chain store business in the State. It thus appears that while plaintiff transacted less than 4.3 per cent of the retail chain store business [fol. 27] done in the State (measured either by gross sales or profits) it paid 46 per cent of all of the specific taxes for the last half of 1933, 41 per cent of the specific taxes for 1934, 16 per cent of the gross sales taxes for the last half of 1933, and 26½ per cent of the total taxes paid or collected under said Act. Plaintiff, together with two other retail grocery chains doing a combined business of less than 13.7 per cent of the retail chain store business done in the State, either gross or net, has paid more than 64 per cent of the total amount of all taxes to date collected or paid under the Act. While this glaring disparity of burden may be due in some part to the failure of the State to enforce the Act as to some chains, it is due largely and predominantly to the inherent discriminatory nature of the Act itself and the necessary violation of the principle of uniformity and equality inherent in its practical application.

XV

The expense of the tax would of necessity have to be absorbed by chain store systems even though it resulted in a loss of all profit. The necessity of meeting the competition of single store owners not so burdened would preclude chain store owners from adding the amount of the tax to the price of goods sold, thereby transferring the burden to consumers. Also chain store systems taxed at the higher rates under the Act would be precluded from passing the burden to consumers because of competition with other chain store systems to which the lower rates apply.

[fol. 28] XVI

Plaintiff has a large investment in its business in the State, and as a result of the continuous operation of such business over a long period of years has built up a large volume of business and acquired valuable good will and valuable contracts, leases, and other property appurtenant to such business, the value of which depends almost entirely upon use in connection therewith. During the five year period ending in 1933, the plaintiff expended annually in the State and paid to the people and business concerns thereof an average sum of $4,876,282.15 for expenses of operation of its business, such as rent, light, heat, advertising, payroll, taxes, and the like, and for purchase of merchandise for resale in its stores.

The weight of the combined specific and gross sales tax and the flagrant inequalities and discriminations inevitably incident to the enforcement of the Act will, if enforcement continues, render it impossible for plaintiff and many other retail chain store systems to successfully or profitably conduct their business in the State, and will force them to abandon such business at great sacrifice and loss of investment, good will and property.

Thus the enforcement of the Act would result in spoliation under the guise of exercising the taxing power of the State, and would operate to arbitrarily take the property and destroy the property rights of plaintiff and many others subject to the Act without compensation and without due process of law.

[fol. 29] XVII

The classification of "persons" for the purpose of the Act into (1) those who conduct a retail business in a single store and (2) those who conduct a retail business in two or more stores, is arbitrary and without relation to the purposes of the Act and rests upon no difference or distinction as to kind of business, kind or character of goods sold, volume of business, amount or rate of profit or return, method of transacting or conducting business, management, location, or patronage. This is true whether the comparison be made between single stores, ordinary chain stores, or "voluntary chain" stores.

In respect to such matters no one of the three groups mentioned has characteristics which set it apart from either of

the other two groups. No differences exist between the members of any group compared with another which do not also exist in equal degree between members of the same group. For illustration, in point of volume the business transacted by many single retail stores in the State exceeds the total volume, from all stores, of many retail chain systems engaged in the State in the same line of business. The same is true in respect of purchasing power, and it is particularly true that the purchasing power of so-called "voluntary chains" commonly exceeds that of the owners of chain stores in the same line of business.

Multiplication of store units under one ownership has no tendency in itself to produce or promote superior or [fol. 30] distinguishable management. In so far as efficiency of management depends upon rate of compensation, it is affected only by the size or earning power of a business and not at all by the number of units into which the business may be separated. The amount of capital available to chain store owners for employment in Minnesota is in some instances greater and in some instances and commonly less than that available to single store owners. No aspect of ownership or operation discloses a distinguishing feature or principle supporting a classification for the purpose of taxation as between chain stores and single owned stores, whether the latter be included in "voluntary chains" or otherwise.

Each store of plaintiff and of other chain store systems, from a management and accounting standpoint, is operated as an independent unit, and generally speaking every such store independently competes for business in its locality with similarly situated single owned stores and other chain stores. Commonly such competing single owned stores have larger stocks, greater volume of gross sales, and larger net profits than the stores of plaintiff and other chain stores operated in the same localities. They compete with chain stores for the same patronage and business on an equal basis and as often as otherwise having competitive advantages over chain stores.

The privilege of conducting two or more stores is not different in nature or degree from the privilege of con- [fol. 31] ducting one store, and persons conducting single stores and those conducting two or more stores and those conducting stores who belong to associations known as

"voluntary chains" all fall into a single class for the purpose of privilege taxation.

XVIII

For all of the foregoing reasons, plaintiff reavers that the Act in question is in violation of the provisions of the Constitution of the State of Minnesota and of the provisions of the Constitution of the United States referred to in paragraph III hereof, and is therefore null and void.

XIX

On or about July 10, 1933, the Tax Commission of the State of Minnesota found and determined that the specific tax payable by the plaintiff under said Act for the year 1933 was the sum of $19,760, and assessed the tax against the plaintiff at that amount.

On or about January 20, 1934, the said Commission found and determined that the amount of the specific tax payable by the plaintiff under said Act for the year 1934 was $16,505.00, and assessed the tax against the plaintiff at that amount, and found and determined that the gross sales tax payable by plaintiff under said Act for the last six months of 192 was the sum of $21,877.67, and assessed the tax against plaintiff at that amount.

The auditor and treasurer of said State demanded of plaintiff payment of all of said sums and threatened to have [fol. 32] the auditor under said Act issue his warrant to the sheriff of a county in which the plaintiff was doing business and had property, commanding the sheriff to levy upon and sell the real and personal property of plaintiff for the enforcement of payment and satisfaction of said tax.

Thereupon, and on or about January 20, 1934, the plaintiff, under protest, did pay the amount of said specific and gross sales tax in the aggregate amount of $58,142.67, together with interest upon the specific tax for 1933 in the sum of $1,194.90, making a total of $59,337.57.

XX

Said Act provides by Section 11 as amended that

"A taxpayer who has paid, voluntarily or otherwise, or from whom there has been collected (other than by the method provided for in the first sentence of Section 10) any

tax not legally due or any amount of tax in excess of that legally due may (1) file with the Tax Commission a claim for the refund of such tax or such excess and/or (2) recover the same by an action at law against the State in any court of record. * * *"

Wherefore, plaintiff prays judgment against the defendant for the sum of Fifty-nine Thousand Three Hundred Thirty-seven and 57/100 Dollars ($59,337.57), together with interest thereon at the rate of six per cent per annum from [fol. 33] and since January 20, 1934, together with plaintiff's costs and disbursements incurred in this action.

M. J. Doherty, W. E. Rumble, William Mitchell, Attorneys for Plaintiff, E-1006 First National Bank Bldg., Saint Paul, Minnesota.

Duly sworn to by E. H. Massmann. Jurat omitted in printing.

[fol. 34] EXHIBIT "A" TO COMPLAINT

An Act raising revenues, imposing a tax on conducting business by the system of chain stores for selling or otherwise disposing of goods, wares, articles or commodities at retail, with certain exceptions providing for the assessment and collection thereof, and for the distribution of the proceeds therefrom, providing penalties for failure to pay such tax, defining certain crimes in connection with the enforcement of such tax, and appropriating money for the administration of this Act.

Be It Enacted by the Legislature of the State of Minnesota:

Section 1. (a) The term "person", when used in this Act, shall include individuals, partnerships, trusts, associations, joint stock companies, corporations, and firms however organized or whatever be the plan of operation.

(b) There is hereby imposed upon every person engaged within the State of Minnesota in conducting a business by the system of chain stores from any of which are sold or otherwise disposed of at retail any goods, wares or merchandise, excepting any person selling at retail one or more of the following—fuel, lumber, building material, gasoline

and oils, and grain, if the gross sales of any such person from such produce or products shall, during any year for which the tax is imposed, equal or exceed 95 per centum of the total gross sales from all sources of any such person, [fol. 35] and excepting co-operative associations organized under the laws of this State in good faith and not for the purpose or with the intent of evading the tax hereby imposed, an annual tax for each calendar year during any part of which such taxpayers shall be so engaged, which tax shall be computed as hereinafter provided for.

Sec. 2. The tax imposed by Section 1 shall be equal to the sum of the amount due under the provisions of subdivision (a) and the amount due under the provisions of subdivision (b) of this section 2, as follows:

(a) A specific amount to be determined as follows: (1) $5.00 for each store in excess of one and not in excess of 10 if said business is conducted at not in excess of 10 stores or mercantile establishments within this state under a single or common ownership, supervision or management.

(2) $15.00 for each store in excess of 10 and not in excess of 20 if said business is conducted at in excess of 10 but not in excess of 20 stores or mercantile establishments within this state under a single or common ownership, supervision or management.

(3) $35.00 for each store in excess of 20 and not in excess of 30 if said business is conducted at in excess of 20 but not in excess of 30 stores or mercantile establishments within this state under a single or common ownership, supervision or management.

(4) $65.00 for each store in excess of 30 and not in excess of 40 if said business is conducted at in excess of 30 but not [fol. 36] in excess of 40 stores or mercantile establishments within this state under a single or common ownership, supervision or management.

(5) $105.00 for each store in excess of 40 and not in excess of 50 if said business is conducted at in excess of 40 but not in excess of 50 stores, or mercantile establishments within this state under a single or common ownership, supervision or management.

(6) $155.00 for each store in excess of 50 if said business is conducted at in excess of 50 stores or mercantile estab-

lishments within this state under a single or common ownership, supervision or management.

(b) An amount based on the combined gross sales, in excess of the exemption set forth in Section 4, of said business at all stores or mercantile establishments within this state under a single or common ownership, supervision or management, but which shall be computed by applying the following rates to the specified portions of such entire or combined gross sales in excess of said exemption.

(1) 1/20th of one per cent on that portion of the gross sales not in excess of $100,000.00.

(2) 2/20ths of one per cent on that portion of the gross sales in excess of $100,000.00 but not in excess of $200,000.00.

(3) 3/20ths of one per cent on that portion of the gross sales in excess of $200,000.00 and not in excess of $300,000.00.

[fol. 37] (4) 4/20ths of one per cent on that portion of the gross sales in excess of $300,000.00 and not in excess of $400,000.00.

(5) 5/20ths of one per cent on that portion of the gross sales in excess of $400,000.00 and not in excess of $500,000.00.

(6) 6/20ths of one per cent on that portion of the gross sales in excess of $500,000.00 and not in excess of $600,000.00.

(7) 8/20ths of one per cent on that portion of the gross sales in excess of $600,000.00 and not in excess of $700,000.00.

(8) 10/20ths of one per cent on that portion of the gross sales in excess of $700,000.00 and not in excess of $800,000.00.

(9) 12/20ths of one per cent on that portion of the gross sales in excess of $800,000.00 and not in excess of $900,000.00.

(10) 15/20ths of one per cent of that portion of the gross sales in excess of $900,000.00 and not in excess of $1,000,000.00.

(11) One per cent on that portion of the gross sales in excess of $1,000,000.

Sec. 3. The terms "store" and "mercantile establishment" shall mean any fixed place at which said business is

conducted even if said place is at the same time being used for other purposes. Conducting a business by the system of Chain Stores shall mean conducting such business from two or more stores under a single or common ownership, supervision or management. Two or more stores or mercantile establishments shall, for the purposes of this act, [fol. 38] be treated as being under a single or common ownership, supervision or management if directly or indirectly owned or controlled by a single person or any group of persons having a common interest in such stores or mercantile establishments, or if any part of the gross revenues, net revenues, or profits from any such stores or mercantile establishments shall directly or indirectly be required to be immediately or ultimately made available for the beneficial uses, or shall directly or indirectly inure to the immediate or ultimate benefit, of any single person or any group of persons having a common interest therein.

Sec. 4. The term "gross sales" shall mean the money value of the consideration received or receivable by the vendor or transferor from the vendee or transferee from every retail sale or transfer made in connection with the business upon which the tax levied by Section 1 is imposed, excepting gross sales of goods, the sale of which at retail is excepted from the tax as provided in Section 1 (b), even when sold at stores, sales from which are subject to the tax hereby imposed. The amount thereof shall be determined in accordance with the method employed by the taxpayer in keeping his accounts. A taxpayer keeping his account on an accrual basis shall be permitted in each year to deduct a reasonable amount to care for bad debts attributable to the business for such year, subject to correction by including recoveries in gross sales for the year of recovery. A taxpayer keeping his accounts on the cash receipts and dis- [fol. 39] bursements basis shall include the gross receipts from sales in the gross sales of the year of their receipt regardless of the year in which the sale was made. A taxpayer may, with the consent of the State Tax Commission, keep his accounts on the installment basis if such method properly reflects the gross sales of his business for any year, and said Commission may prescribe rules to insure that such taxpayers shall properly allocate gross sales as between successive tax years. Gross sales shall not include the consideration received by a vendor from a purchaser if the sale

is made from a store or mercantile establishment in this state to a purchaser residing without this state unless the purchaser is present within this state at the time of such sale and purchase. The tax imposed by Section 1, so far as measured by gross sales, shall be measured by the gross sales of the year for which the tax is imposed; provided, however, there shall be exempted from the total aggregate gross sales of any such business in each tax year the gross sales from that one of all the stores or mercantile establishments within this State under a single or common ownership, supervision or management, which the person on whom the tax is imposed shall select if the State Tax Commission is notified thereof prior to the first day of February of the year for which the tax is imposed, provided, further that as to the tax for 1933, such notification may be made on or before July 1st, 1933.

Sec. 5. The tax imposed hereby so far as measured by [fol. 40] Section 2 (a) shall be computed on the basis of the number of stores under a single or common ownership, supervision or management on July 1st of each tax year.

Sec. 6. The first year for which this tax is hereby imposed shall be the period commencing with July 1st, 1933, and ending with December 31st, 1933. The tax imposed, so far as measured in accordance with Section 2 (a) shall for that period be due and payable on or before July 1st, 1933, and that portion of such tax so far as measured by Section 2 (b) shall be due and payable on or before January 20th, 1934.

Sec. 7. The tax imposed by Section 1 shall be payable as follows:

(a) That portion thereof measured by Section 2 (a) shall be paid on or before January 20th of each year.

(b) That portion thereof measured in accordance with Section 2 (b) shall be paid on or before January 20th of the year succeeding that for which imposed or within 30 days after any person liable for such tax shall cease entirely to do business within this state of the kind on which the tax is imposed.

Sec. 8. Every person on whom a tax is imposed by Section 1 shall make a return of his gross sales for the year for which the tax is imposed to the State Tax Commission on forms to be prepared by the Commission, and to be fur-

nished him by said Commission. Said return shall be filed with the State Tax Commission on or before January 20th [fol. 41] of the year following the year for which the tax is imposed or within 30 days after any such person shall cease entirely to do business within this state of the kind on which the tax is imposed. The Minnesota Tax Commission shall enter on its records the amount of taxes found and determined by it to be due from any person, as hereinbefore provided, and on or before January 30th following, shall certify such amount to the State Auditor, who thereupon shall make his draft upon such person for the amount of taxes thus certified and place the same in the hands of the State Treasurer for collection. When such drafts have been placed by the State Auditor in the hands of the State Treasurer for collection, the State Treasurer shall mail, within 10 days, to the person from whom the tax is due, a written notice of the amount thereof and demand for its payment. The taxes shall be collected by and paid to the State Treasurer.

Sec. 9. If any person required by this Act to file any return shall fail to do so within the time prescribed by this Act, or shall make, wilfully or otherwise, an incorrect, false or fraudulent return, he shall on the written demand of the Tax Commission file such return, or corrected return, within 30 days after the mailing to him of such written demand. If any person shall fail within said time to file such return, or corrected return, the Tax Commission shall make for him a return, or corrected return, from its own knowledge and from such information as it can obtain through testimony or otherwise, and assess a tax on the basis thereof, [fol. 42] the amount of which tax (less payment theretofore made on account of such tax) shall be certified to the State Auditor.

Sec. 10. If any such draft remains unpaid for more than 60 days after demand has been made by the Treasurer for its payment, recovery may be had thereon in an action in the name of the State in the same manner as if it were a debt due the State. Such tax may also be collected by having the State Auditor issue his warrant to the sheriff of any county of the state commanding him to levy upon and sell the real and personal property of the taxpayer within the county, and to return such warrant to the State Auditor and pay to him the money collected by virtue thereof by a

time to be therein specified, not less than 60 days from the date of the warrant. The sheriff shall proceed thereunder to levy upon and seize any property of the taxpayer within his county, and shall sell so much thereof as is required to satisfy such taxes and his costs, but such sales shall as to their manner be governed by the laws applicable to sales of like property on execution issued against property upon a judgment of a court of record. The sheriff shall make a return to the State Auditor and the proceeds of such sale less the sheriff's costs shall be turned over by the State Auditor to the State Treasurer who shall retain such part thereof as is required to satisfy the tax and costs and pay over any balance to the taxpayer. No suit shall lie to enjoin the collection of the taxes imposed by this Act.

[fol. 43] Sec. 11. A taxpayer who has paid, voluntarily or otherwise, or from whom there has been collected (other than by the method provided for in the first sentence of Section 10) an amount of tax for any year in excess of that legally due for such year, may recover the excess by an action of law against the state in any court of record, but such action shall be commenced within 2 years after the tax claimed to be excessive has been paid.

Sec. 12. Taxes shall bear interest at the rate of one per cent per month during the period during which they remain unpaid. Said interest shall be collected in the same manner as hereinbefore provided for the collection of the taxes imposed by this Act.

Sec. 13. Any person liable to a tax imposed by this Act who shall fail to pay the same when payable, or who shall violate any other provision of this Act, imposing duties on him, shall be guilty of a misdemeanor.

Sec. 14. The Minnesota Tax Commission shall administer and enforce the assessment of the tax imposed by this Act. It may make and publish such rules and regulations, not inconsistent with this Act, as it may deem necessary in enforcing its provisions. It shall cause to be prepared blank forms for the returns required by this Act, and shall distribute the same throughout the State and furnish them on application, but failure to receive or secure them shall not relieve any person from the obligation of making any return required of him by this Act.

[fol. 44] Sec. 15. For the purpose of determining the correctness of any return, or of determining whether or not any person should have made a return or paid tax hereunder, the Tax Commission shall have the power to examine or cause to be examined any books, papers, records, or memoranda relevant to making such determinations, whether such books, papers, records or memoranda are the property of or in the possession of the taxpayer or any other person. It shall further have the power to require the attendance of any taxpayer or other person having knowledge or information relevant to such determinations aforementioned, to compel the production of books, papers, records or memoranda by persons so required to attend, to take testimony on matters material to such determinations, and to administer oaths or affirmations in any such connection. The Tax Commission is empowered at any time and from time to time to require any owner or manager of any store in the State of Minnesota to file with the Tax Commission, a statement under oath, showing the ownership, management and control of such store for the purpose of determining whether or not such store is subject to the tax hereby imposed. Such statement shall be in such form as the Tax Commission shall prescribe.

Sec. 16. There is hereby appropriated out of the moneys in the State Treasury, not otherwise appropriated, the sum of $10,000 for each of the fiscal years ending June 30, 1934, and June 30, 1935, respectively, which appropriation is [fol. 45] hereby made to the State Tax Commission to be used by it for the purposes of collecting the tax provided for by this act.

Sec. 17. The revenue derived from taxes, interest, and fines provided for in this Act when collected is hereby appropriated for the purpose of being credited to the appropriation now annually made for aid to state high, graded, semi-graded, consolidated, industrial, and rural schools, as now provided by law, to be distributed by the Department of Education in accordance with existing laws.

Sec. 18. If any part or provision of this Act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not impair or invalidate any other part or provision in the remainder of the Act; and, if any part or provision of this Act shall for any rea-

son be adjudged by any court of competent jurisdiction constitutionally inapplicable to any case or situation within the terms of such part or provision, such judgment shall not impair or invalidate such part or provision as applied to any other case or situation within their terms; and, if any exception from the tax hereby imposed shall for any reason be adjudged by any court of competent jurisdiction invalid, the tax shall be imposed upon the taxable subject as to whom or which such exception has thus been held invalid.

[fol. 46] EXHIBIT "B" TO COMPLAINT

An Act to amend Laws 1933, Chapter 213, Section 11, and Mason's Minnesota Statutes of 1927, Section 49

Be It Enacted by the Legislature of the State of Minnesota:

Section 1. That Section 11, Chapter 213 of Laws 1933 be and the same hereby is amended to read as follows:

"Sec. 11. A taxpayer who has paid, voluntarily or otherwise, or from whom there has been collected (other than by the method provided for in the first sentence of Section 10) any tax not legally due or any amount of tax in excess of that legally due may (1) file with the Tax Commission a claim for the refund of such tax or such excess and/or (2) recover the same by an action at law against the State in any court of record, but no such claim may be filed and no such action may be brought after the expiration of two years from the date of payment of the tax involved. If a taxpayer shall file with the Tax Commission a claim for refund hereunder, no action may be brought against the State to recover the tax included in such claim until said Commission has finally disposed thereof or has failed within six months after the filing of such claim to render final action thereon.

If the Tax Commission finds that the tax for the refundment of which claim is filed was not legally due or payable, it shall issue its certificate to the taxpayer for the refundment thereof, otherwise it shall disallow such claim.

[fol. 47] "Any claim for refund allowed by the Tax Commission, and any judgment recovered against the State in an action to recover any such tax, shall include interest

upon the tax refunded or recovered from the date of payment until the date of refundment or judgment at the rate of six (6) per cent per annum, and any such judgment shall bear a like rate of interest from date of entry until date of payment thereof.

Any certificate for refundment issued by the Tax Commission hereunder or a certified copy of any judgment against the State recovered hereunder may be filed with the State Auditor, who shall thereupon issue his warrant on the State Treasurer for the amount thereof in favor of the payee of such certificate or judgment creditor, as the case may be, and it shall be the duty of the State Treasurer to pay all such warrants out of any funds in the state treasury not otherwise appropriated.

There is hereby appropriated out of any funds at any time in the state treasury not otherwise appropriated (but not exceeding at any time the total amount of taxes to that time paid or collected under this act plus interest at the rate of six (6) per cent per annum on the amount of each payment of taxes from the date paid until refunded by order of the Tax Commission, or repaid pursuant to judgment recovered hereunder or until claim for refundment thereof and action for the recovery thereof are barred hereunder) such sum or sums as may be necessary from time to time to pay such refunds and judgments.

[fol. 48] Section 2. Mason's Minnesota Statutes of 1927, Section 49, insofar as inconsistent herewith is hereby amended.

In District Court of Ramsey County

Answer

Defendant for its answer to plaintiff's complaint herein:

I

Admits the allegations of Paragraph I of plaintiff's complaint except the following allegations, which defendant denies:

"Said Act was not adopted by the legislature in the exercise of the police power of the State. It does not purport to establish any standard of conduct for the business affected, and does not deal with nor affect any matter relat-

ing to public health, welfare, safety, or morals, nor provide for any supervision or inspection in relation thereto, and does not purport to be and is not in any aspect a police measure or regulation.

The business of selling at retail by the system of chain stores is not a proper subject of police regulation, and in any event is no more subject to and no more requires such regulation than the business of selling at retail otherwise than by the system of chain stores. The former is not in a class distinguishable from the latter for the purpose of the imposition of license fees or taxes.

[fol. 49] The conduct of retail business by the system of chain stores as carried on in the State of Minnesota is not adverse or inimical to any interest of the people of the State, and does not in any manner or degree threaten or endanger the public health, safety, morals, or general welfare. On the contrary, the conduct of such business is to the great economic advantage of the people of the State."

II

Defendant admits the allegations made in Paragraph II of plaintiff's complaint.

III

Defendant denies the allegations made in Paragraph III of plaintiff's complaint.

IV

Defendant denies the allegations made in Paragraph IV of plaintiff's complaint.

V

Defendant alleges that it does not have sufficient information to form a belief as to whether the allegations made in Paragraph V of plaintiff's complaint are true and for that reason denies said allegations.

VI

Defendant denies the allegations made in Paragraph VI of plaintiff's complaint.

[fol. 50]

VII

Defendant denies the allegations made in Paragraph VII of plaintiff's complaint.

VIII

Defendant denies the allegations made in first subparagraph of Paragraph VIII of plaintiff's complaint. Defendant alleges that it does not have sufficient information to form a belief as to whether the following allegation made in Paragraph VIII of plaintiff's complaint is true and for that reason denies said allegation:

"Certain large national chains having many retail stores in many states, and doing a large business in this State, are entirely excluded from the application of the Act by reason of the fact that their Minnesota business is transacted at one store only."

IX

Defendant admits the following allegations of Paragraph IX of plaintiff's complaint:

"The amount of the specific tax is computed solely on the basis of the number of stores under a single or common ownership, supervision, or management on July 1 of each tax year, the amount of the tax being the same whether the store or stores taken as the basis of the tax be owned and operated for one day or for three hundred and sixty-five days or for any intermediate number of days during the tax year, * * *."

[fol. 51] Defendant denies all other allegations made in said Paragraph.

X

Defendant denies the allegations made in Paragraph X of plaintiff's complaint.

XI

Defendant alleges that he does not have sufficient information to form a belief with reference to the truth of the allegations made in Paragraph XI of plaintiff's complaint and for that reason denies said allegations.

XII

Defendant alleges that it does not have sufficient information to form a belief as to whether the allegations made in Paragraph XII of plaintiff's complaint are true and for that reason denies said allegations.

XIII

Defendant alleges that it does not have sufficient information to form a belief as to whether the allegations made in Paragraph XIII of plaintiff's complaint are true and for that reason denies said allegations.

XIV

Defendant admits the allegations made in Paragraph XIV of plaintiff's compkaint as to the amount of tax paid up to July 1, 1934. Defendant alleges that it does not have [fol. 52] sufficient information to form a belief as to the truth of the allegations made in the last subparagraph of Paragraph XIV of plaintiff's complaint and for that reason denies said allegations. Defendant denies all other allegations made in Paragraph XIV of plaintiff's complaint.

XV

Defendant alleges that it does not have sufficient information to form a belief as to whether the allegations made in Paragraph XV of plaintiff's complaint are true and for that reason denies said allegations.

XVI

Defendant admits the following allegation made in Paragraph XVI of plaintiff's complaint:

"Plaintiff has a large investment in its business in the State, and as a result of the continuous operation of such business over a long period of years has built up a large volume of business and acquired valuable good will and valuable contracts, leases, and other property appurtenant to such business, the value of which depends almost entirely upon use in connection therewith."

Defendant alleges that it does not have sufficient information to form a belief as to whether the following allegation from Paragraph XVI of plaintiff's complaint is true and for that reason denies said allegation:

[fol. 53] "During the five year period ending in 1933, the plaintiff expended annually in the State and paid to the

people and business concerns thereof an average sum of $4,876,282.15 for expenses of operation of its business, such as rent, light, heat, advertising, payroll, taxes, and the like, and for purchase of merchandise for resale in its stores."

Defendant denies all other allegations made in Paragraph XVI of plaintiff's complaint.

XVII

Defendant denies the allegations made in Paragraph XVII of plaintiff's complaint.

XVIII

Defendant denies the allegations made in Paragraph XVIII of plaintiff's complaint.

XIX

Defendant admits the allegations made in Paragraph XIX of plaintiff's complaint.

XX

Defendant admits the allegations contained in Paragraph XX of plaintiff's complaint.

XXI

Defendant denies each allegation, matter and thing contained in plaintiff's complaint except as hereinbefore admitted, qualified or denied.

Wherefore defendant prays judgment that plaintiff take nothing by this action and that defendant be allowed its [fol. 54] costs and disbursements herein.

Harry H. Peterson, Attorney General, Matthias N. Orfield, Assistant Attorney General, Roger S. Rutchick, Assistant Attorney General, Attorneys for Defendant, 102 State Capitol, St. Paul, Minnesota.

Duly sworn to by Matthias N. Orfield. Jurat omitted in printing.

[fol. 55] IN DISTRICT COURT OF RAMSEY COUNTY

SUPPLEMENTAL COMPLAINT

Plaintiff for its supplemental complaint against the defendant herein alleges:

I

Since the commencement of this action and on or about January 20, 1935, the Tax Commission of the State of Minnesota found and determined that under the Act referred to in plaintiff's complaint (Chapter 213, Laws of Minnesota, 1933, as amended) plaintiff's gross sales tax for the year 1934 was in the sum of $45,222.51 and that plaintiff's specific tax under said Act for the year 1935 was in the sum of $14,180.00. The Commission assessed the tax against the plaintiff in the said two amounts, and the Treasurer of said State demanded of the plaintiff payment thereof. Thereupon, and on or about March 3, 1935, the plaintiff, under protest and under claim that the said Act was unconstitutional and invalid, did pay to the defendant the amounts so assessed, being the aggregate sum of $59,402.51.

II

The total of all taxes paid to and collected by the State under said Act up to the date of this supplemental complaint is the sum of $619,150.45, consisting of $122,600.00 of specific tax and $496,550.45 of gross sales tax.

[fol. 56]

III

From the operation of plaintiff's business in the State of Minnesota during the year 1934, there resulted a net loss of 1.97 per cent of its aggregate gross sales.

Wherefore, in addition to the amount for which it prayed judgment in its original complaint, plaintiff prays judgment against the defendant for the sum of $59,402.51, together with interest thereon from and since March 3, 1935, at the rate of six per cent per annum. In total plaintiff prays judgment against defendant for the sum of $118,740.08, together with interest upon the sum of $59,337.57 from January 20, 1934, and upon the sum of $59,402.51 from March 3, 1935, all at the rate of six per cent per

annum, together with plaintiff's costs and disbursements incurred in this action.

November 20, 1935.

M. J. Doherty, W. E. Rumble, William Mitchell.

[fol. 57] *Duly sworn to by M. J. Doherty. Jurat omitted in printing.*

In District Court of Ramsey County

Answer to Supplemental Complaint

Defendant for its answer to plaintiff's supplemental complaint herein:

I

Admits the allegations contained in paragraph I of plaintiff's said complaint.

II

Admits the allegations contained in paragraph II of plaintiff's said complaint.

III

Alleges that it does not have sufficient information to form a belief as to truth of the allegations contained in paragraph III of plaintiff's said complaint and for that reason denies said allegations.

[fol. 58] Wherefore, defendant prays judgment that plaintiff take nothing by this action and that defendant recover its costs and disbursements herein.

Harry H. Peterson, Attorney General, Matthias N. Orfield, Deputy Attorney General, Roger S. Rutchick, Assistant Attorney General, Attorneys for Defendant, 102 State Capitol, St. Paul, Minnesota.

Duly sworn to by Matthias N. Orfield. Jurat omitted in printing.

[fol. 59] In District Court of Ramsey County

Amended Supplemental Complaint

Plaintiff for its amended supplemental complaint against the defendant herein alleges:

I

Since the commencement of this action and on or about January 20, 1935, the Tax Commission of the State of

Minnesota found and determined that under the Act referred to in plaintiff's complaint (Chapter 213, Laws of Minnesota, 1933, as amended) plaintiff's gross sales tax for the year 1934 was in the sum of $45,222.51, and that plaintiff's specific tax under said Act for the year 1 was in the sum of $14,180.00. The Commission assessed the tax against the plaintiff in the said two amounts, and the Treasurer of said State demanded of the plaintiff payment thereof. Thereupon, and on or about March 3, 1935, the plaintiff, under protest and under claim that the said Act was unconstitutional and invalid, did pay to the defendant the amounts so assessed, being the aggregate sum of $59,402.51.

II

At the time of filing its return and making payment of tax under said Act in January, 1934, plaintiff had in operation in the State and paid a specific tax as upon 142 stores, and at the time of filing its return in January, 1935, plaintiff had in operation and thereafter on March 3, 1935, paid [fol. 60] a specific tax as upon 127 stores, all at the rates prescribed by the Act. Plaintiff had in operation in the State on July 1, 1934, only 125 stores, and on July 1, 1935, only 122 stores. Even on the assumption that the Act is valid, therefore, plaintiff paid in excess of its liability $2,635.00 on account of the specific tax of 1934 and $775.00 on account of the specific tax of 1935.

III

The total of all taxes paid to and collected by the State under said Act up to the date of this supplemental complaint is the sum of $619,150.45, consisting of $122,600.00 of specific tax and $496,550.45 of gross sales tax.

IV

From the operation of plaintiff's business in the State of Minnesota during the year 1934, there resulted a net loss of 1.97 per cent of its aggregate gross sales.

Wherefore, in addition to the amount for which it prayed judgment in its original complaint, plaintiff prays judgment against the defendant for the sum of $59,402.51, together with interest thereon from and since March 3, 1935, at the rate of six per cent per annum. In total plaintiff prays

judgment against defendant for the sum of $118,740.08, together with interest upon the sum of $59,337.57 from January 20, 1934, and upon the sum of $59,402.51 from March 3, 1935, all at the rate of six per cent per annum, [fol. 61] together with plaintiff's cost and disbursements incurred in this action.

February 28, 1936.

M. J. Doherty, W. E. Rumble, William Mitchell.

Duly sworn to by M. J. Doherty. Jurat omitted in printing.

IN DISTRICT COURT OF RAMSEY COUNTY

ANSWER TO AMENDED SUPPLEMENTAL COMPLAINT

Defendant for its answer to plaintiff's amended supplemental complaint:

[fol. 62]

I

Admits the allegations in Paragraph I of said complaint.

II

Alleges that it does not have sufficient information to form a belief as to the truth of the allegations contained in the first two sentences of Paragraph II of said complaint and for that reason denies said allegations.

III

Admits the allegations in Paragraph III of said complaint.

IV

Denies each allegation, matter and thing contained in said complaint not hereinbefore admitted or otherwise denied.

Wherefore, Defendant prays judgment that plaintiff take nothing by this action and that defendant recover its costs and disbursements herein.

Harry H. Peterson, Attorney General, Matthias N. Orfield, Assistant Attorney General, Roger S. Rutchick, Assistant Attorney General, Attorneys for Defendant, 102 State Capitol, St. Paul, Minnesota.

[fol. 63] *Duly sworn to by Matthias N. Orfield. Jurat omitted in printing.*

IN DISTRICT COURT OF RAMSEY COUNTY

ORDER AMENDING DECISION.

The above entitled matter came before the Court on the 27th day of November, 1937, upon a motion by the plaintiff made upon the minutes of the Court for an order amending the findings of fact and conclusions of law constituting the Court's decision heretofore filed herein. M. J. Doherty, of Doherty, Rumble, Butler, Sullivan & Mitchell, appeared on behalf of the plaintiff, and Matthias N. Orfield, Deputy Attorney General, appeared on behalf of the defendant. [fol. 64] After hearing the arguments of counsel and after giving full consideration to the matter, It Is Hereby Ordered that the decision of the Court heretofore filed be and it is hereby amended by the substitution of the amended decision hereto attached, and that in so far as the amendments sought by plaintiff by its motion are embodied in said amended decision, the motion is granted, otherwise it is denied.

Dated January 24, 1938.

(Signed) Richard D. O'Brien, District Judge.

Further Proceedings Herein are stayed for a Period of Thirty days from the date hereof.

O'Brien, J.

IN DISTRICT COURT OF RAMSEY COUNTY

Amended Decision

The above entitled action was tried to the Court without a jury commencing April 15 and concluding April 27, 1936, the plaintiff being represented by its attorneys, M. J. Doherty and William Mitchell, and the defendant being represented by Harry H. Peterson, Attorney General, Matthias N. Orfield, Deputy Attorney General and Roger S. Rutchick, Assistant Attorney General.

The action was brought for the recovery by the plaintiff of the amount of taxes paid by it under the Minnesota Chain Store Tax Act, Chapter 213 of the Laws of Minnesota for [fol. 65] 1933, as amended by Chapter 16 of the Extra Session Laws of 1933-1934.

Having fully considered the evidence introduced at the hearing of the case and the briefs and oral arguments of counsel the Court makes findings of fact as follows:

Findings of Fact

1.

The legislature of the State of Minnesota, at its regular session in 1933, enacted a statute entitled, "An act raising revenues, imposing a tax on conducting business by the system of chain stores for selling or otherwise disposing of goods, wares, articles or commodities at retail, with certain exceptions providing for the assessment and collection thereof, and for the distribution of the proceeds therefrom, providing penalties for failure to pay such tax, defining certain crimes in connection with the enforcement of such tax, and appropriating money for the administration of this act." This act was approved by the Governor on April 12, 1933, and is known as Chapter 213 of the Laws of Minnesota for 1933. The act purports to impose upon all who are engaged within the State of Minnesota in conducting a business by the system of chain stores (as the conducting of such a business is defined in the act) from any of which are sold at retail goods, wares and merchandise, an annual composite tax computed on two bases and consisting of (1), [fol. 66] a specific tax per store (which will be designated in these findings as the specific tax) and a gross sales tax, (which will be designated in these findings as the gross sales tax.) Each of said units of said composite tax is graduated as set forth hereinafter.

Subject to the exceptions noted below, the Chain Store that the specific tax shall be graduated as follows:

The Act provides that the specific store tax shall be determined as follows:

$5 for each store in excess of 1 and not in excess of 10;
$15 for each store in excess of 10 and not in excess of 20;
$35 for each store in excess of 20 and not in excess of 30;
$65 for each store in excess of 30 and not in excess of 40;
$105 for each store in excess of 40 and not in excess of 50;
$155 for each store in excess of 50.

Subject to the exception noted below, the Chain Store Tax Act provides that the gross sales tax shall be graduated as follows:

1/20 of 1% on gross sales up to $100,000;
2/20 of 1% on gross sales in excess of $100,000 up to $200,000;
3/20 of 1% on gross sales in excess of $200,000 up to $300,000;
[fol. 67] 4/20 of 1% on gross sales in excess of $300,000 up to $400,000;
5/20 of 1% on gross sales in excess of $400,000 up to $500,000;
6/20 of 1% on gross sales in excess of $500,000 up to $600,000;
8/20 of 1% on gross sales in excess of $600,000 up to $700,000;
10/20 of 1% on gross sales in excess of $700,000 up to $800,000;
12/20 of 1% on gross sales in excess of $800,000 up to $900,000;
15/20 of 1% on gross sales in excess of $900,000 up to $1,000,000;
1% on gross sales in excess of $1,000,000.

Excepted from the act are persons conducting chain stores for the sale at retail of one or more of the following commodities:

"fuel, lumber, building material, gasoline and oils, and grain, if the gross sales of any such person from such produce or products shall, during any year for which the tax is imposed, equal or exceed 95 per centum of the total gross sales from all sources of any such person, * * *."

Also excepted are:

"co-operative associations organized under the laws of this State in good faith and not for the purpose or with the intent of evading the tax hereby imposed, * * *."

There is excepted from the gross sales tax of each person all of the sales made at one store of the owner's selection.

[fol. 68] The taxes imposed by the act are in addition to every other form of tax for which the persons within the terms of the act were liable prior to the passage of the act.

Section 11 of this act was amended by Chapter 16 of the Extra Session Laws of 1933-1934, with reference to the recovery of money paid under the act which was not legally due. This amendment was approved by the Governor on December 23, 1933.

All reference herein to the act will be to the original act up to the time when it was amended and to the amended act thereafter. The terms, "chain stores" and "persons" are used with the meaning they are given in the act. "Chain store group" is used to mean an aggregation of retail stores under a common ownership, management or control.

2.

The act in question is essentially a revenue measure. It went into effect on July 1, 1933. To the end of 1935 the following amounts were paid:

For the last half of 1933:	
Specific tax	$43,060.00
Gross sales tax	137,764.12
For the year 1934:	
Specific tax	$42,350.00
Gross sales tax	358,786.33
For the year 1935:	
Specific tax	$37,190.00

making a total of $619,150.45.

[fol. 69] During this period three hundred twelve (312) chains filed reports and paid a tax. Of these two hundred sixteen (216) were corporations, thirty-five (35) partnerships, fifty-seven (57) individuals, and four (4) trustees and miscellaneous.

Of three hundred six (306) chains reporting for 1934, one hundred fifty-one (151) were two-store chains, fifty-six (56) were three-store chains, twenty-four (24) were four-store chains, and two hundred seventy-eight (278) were chains of ten stores or less. Only eleven (11) were chains of more than twenty (20) stores, and only four (4) were chains of more than fifty (50) stores.

In respect to volume of sales four (4) reporting chains had aggregate sales of less than $10,000.00, eighteen (18) had aggregate sales of less than $25,000.00, fifty-three (53) had aggregate sales of less than $50,000.00, one hundred

eleven (111) had aggregate sales of less than $100,000.00, one hundred eighty-five (185) had aggregate sales of less than $200,000.00, and two hundred thirteen (213) had aggregate sales of less than $300,000.00. Only fifteen (15) had aggregate sales of over $1,000.00, and only four (4) had aggregate sales in excess of $4,000,000.00.

3.

Throughout the period concerned in this action, there were engaged in selling at retail in the State of Minnesota (a) persons operating chain store systems, (b) persons operating single stores but associated together in so-called [fol. 70] cooperative or voluntary chains, and (c) persons operating single stores and not so associated. The figures for eighteen of the most important lines of retail business in the State show that in 1929 13.5 per cent of the total volume was done by chain stores and 79.3 per cent by single stores, and in 1933 17.8 per cent was done by chain stores and 76.8 per cent by single stores. The remainder is accounted for by mail order business, house to house sales, and miscellaneous. In 1933 the number of stores operated by chains was 2,881 and the number operated by single store owners was 30,416. For the entire United States the figures were: 1929, chains 20 per cent, single stores 77.5 per cent; 1933, chains 25.2 per cent, single stores 71.2 per cent.

In the year 1935 the members of four voluntary chains in the grocery field operated in the State a total of 761 stores. These four were the Fairway System, the Allied Stores, the Red and White Co-operative Grocery Chain, and the Independent Grocers Alliance. The two last named operate on a national scale. The Fairway System for the year mentioned had aggregate headquarters sales to more than four hundred stores in the State of $5,500,000.00.

4.

Many kinds of retail business are carried on in Minnesota by the chain store system. The volume of sales per store in different kinds of business varies considerably and there [fol. 71] are considerable variations in average sales per store and in average profits per store in chain store groups selling substantially the same kinds of merchandise, but generally the chain store groups having the largest num-

ber of stores make a larger profit than chain store groups selling substantially the same kind of merchandise and having a smaller number of stores. Generally, but by no means always, profits per chain store in the same line of business tend to increase with the number of stores in a chain.

5.

At the time of and at all times subsequent to the adoption of the act the system of selling goods by the system of chain stores as carried on in Minnesota differed from the system of selling goods in independently owned stores not associated in voluntary chains, in many ways, and had the following advantages over the latter system:

(1) The chain store groups buy goods in larger quantities and thereby secure larger quantity discounts than independent stores.

(2) The chain store groups have greater financial power and thereby are enabled to take advantage of cash discounts in many cases not available to independent stores.

(3) The chain store groups receive substantial special rebates and advertising allowances generally not granted to independent stores.

(4) The chain store groups make use of central warehousing and thereby effect economies in warehousing not available to independent stores.

[fol. 72] (5) The chain store groups deliver a considerable portion of their goods from their warehouses to their several stores in full truck lots and thereby effect economies in delivery expense not available to independent stores.

(6) The chain store groups have more abundant capital and therefore have better credit and pay lower interest rates than independent stores.

(7) The chain store groups maintain research divisions which give them advance information about many things useful in buying and selling goods, such as, impending price changes and location of favorable buying markets. They also have greater skill in buying so as to keep the stores stocked with goods suitable in price, style and quality to the purchasing demand.

(8) The chain store groups have a more rapid turnover than independent stores.

(9) The chain store groups, particularly in the larger cities, enjoy advertising advantages over independent stores in being able to advertise sales at several stores in the same advertisement, thereby cutting down the cost of advertising.

(10) The chain store groups use a more or less standardized method of displaying goods which has advantages in advertising and in making sales over the methods employed by independent stores.

(11) The chain store groups equip their stores with standardized equipment and in this manner effect economies in the cost of equipment and in the usefulness of equipment in case a store is discontinued.

[fol. 73] (12) The chain store groups maintain stores only in cities and villages that have been proved to be good centers for the sale of their goods. They do no pioneering as do independent stores.

(13) Each store in a chain store group profits from the good will built up by other stores in the same system.

(14) In the past prior to the passing of the unfair trade practices act in Minnesota in 1937 chain stores have injured competitors and extended their own business by the use of loss leaders.

(15) Chain store groups manufacture and otherwise produce the goods they sell to a far greater extent than do independent stores and thereby effect economies in the cost of these goods.

(16) Chain store groups open stores only in the better locations in each city and thereby enjoy location advantages in selling goods.

Chain store groups enjoy most of the foregoing chain-store advantages over stores which are members of voluntary chains.

Plaintiff enjoyed most of the foregoing chain store advantages over independent stores.

6.

There are in the state various persons engaged in business by the chain store system each of whom sells to the

extent of 95 per cent of its gross sales one or more of the following commodities: fuel, lumber, building material, gasoline and oils, and grains. The character of the business of such persons differs materially from the character [fol. 74] of the business of persons subject to the chain store tax. The classification of such persons as not subject to the specific tax is reasonable classification.

7.

There are in the state various cooperative associations organized under the laws of the state (in good faith and not for the purpose or with the intent of evading the tax imposed by the act) who are engaged in the sale at retail by the chain store system, of the same products and commodities as are sold by plaintiffs and other chain store owners and in competition with them. Such associations differ in purpose, form of organization, and methods of doing business from the chain store organizations subject to the tax. The classification of such persons as a group not subject to the specific tax is reasonable classification.

8.

The exemption from the specific tax of a single chain store, a member of a chain store group operating in other states, is based upon a reasonable classification.

9.

The exemption of one store in each chain from the specific tax is based upon a reasonable classification.

10.

The specific tax imposed by the act is uniform in its op- [fol. 75] eration throughout the state and is uniform on the same class of subjects.

11.

The specific tax for the year 1933 fell due July 1, 1933, for each year thereafter the specific tax fell due on January 20 of the year following the year for which it was payable.

12.

The specific tax can readily be collected without also collecting the gross sales tax. The legislature intended that the two parts of the chain store tax should be separable.

13.

The plaintiff is a corporation organized under the laws of the State of Delaware, and is and for many years has been engaged in the State of Minnesota in conducting a retail grocery and meat business by the system of chain stores as defined by the act, and if the act be valid is subject to the tax thereby imposed.

Plaintiff transacts business in the states of Minnesota, North Dakota, South Dakota, and Wisconsin. By far the greater number of its stores are located in Minnesota. On July 1, 1935, of a total of one hundred forty-seven (147) stores one hundred twenty-two (122) were located in Minnesota. Its total gross sales in the state were in the last six months of 1933, $2,900,760.00, in 1934, $5,192,250.00, and in 1935, $5,428,978.83. From 1923 to 1929 it had a rate [fol. 76] of net profit in percentage of gross sales on its Minnesota business as follows:

Year	Percentage
1923	2.94
1924	4.39
1925	2.34
1926	2.51
1927	2.48
1928	.54
1929	1.48

For the years 1930 to 1934 it suffered a net loss on its Minnesota business in the following percentages:

Year	Percentage
1930	2.86
1931	2.78
1932	.26
1933	1.83
1934	1.97

These profit and loss figures correspond almost exactly with the profit and loss figures of the plaintiff on its entire business within and without the State of Minnesota.

A normal rate of profit for retail grocers generally for the year 1930 to 1934 was not in excess of two per cent.

14.

The stores of the plaintiff are distributed generally throughout the state, and are operated in both large and [fol. 77] small cities and towns. Generally speaking, the stores are operated in direct competition with stores in the same line of business operated by other chains, by the members of voluntary chains, and by owners of single stores. Commonly in plaintiff's store location are found competing stores involving all three types of operation. The competing chains are of various sizes as measured either by number of stores or aggregate gross sales. The result has been that these competitors have been subject to and have paid taxes under the act at various rates, both as to the specific and gross sales tax features. Thus an analysis of the taxes paid by the plaintiff and twenty-two of its principal chain competitors for the year 1934 shows that the gross sales tax average or composite rates paid by the competitors varied from .05 per cent to .85 per cent as compared with the rate of .87 per cent paid by plaintiff. The maximum rates varied from 1/20 of one per cent to one per cent, the latter being the maximum rate paid by plaintiff. The specific tax rates (in percentage of gross sales) of plaintiff's competitors ranged from .0001 per cent to .15 per cent, as compared with the plaintiff's rate of .36 per cent. The total rates of the two taxes combined varied from .056 per cent to .94 per cent for plaintiff's competitors compared with 1.23 per cent for plaintiff.

15.

As in the case of plaintiff and its competitors, it is true generally that sales made by persons taxed under any [fol. 78] brackets of the Act are made in competition with like sales of the same character of merchandise made by persons who are taxed under other brackets of the act.

The gross sales tax is laid as an excise upon individual sales. As each sale is made liability for tax upon that sale arises. Different sales, however, take different rates, though they be of identical articles of merchandise and be made in identical manner. The rate upon any sale depends upon the number and size of sales already made in the current year. The Act therefore taxes different persons at different rates for the privilege of doing the same act, and

taxes the same person at different rates for the exercise of the same privilege at different times, depending upon the number of times it has previously been exercised in a given year.

16.

In Minnesota, as elsewhere, there is no constant or uniform relation between volume of gross sales and amount or rate of net profit. There are wide variations in the profit margins as between different kinds of business and different kinds of merchandise; also wide differences in the rate of net profit made by different concerns in the same line of business for any given period; also wide variations in the rate of profit made by the same concern or concerns in any given line of business from year to year and from time to time. A great many factors enter into the result, among [fol. 79] which may be mentioned efficiency of management, form of organizations, expenses of operation, competitive conditions, character of community, type of patrons, p portion of high and low profit margin goods sold, and tr of commodity prices.

17.

In the light of the foregoing findings the gross sales tax is arbitrary, unreasonable, unequal, and discriminatory, and the classification of chain store systems or concerns according to the volume of their gross sales (resulting from the graduation of the gross sales tax rates) is without relation to the purpose of the Act and without relation to the value of the privilege for which the tax is enacted, and the imposition of the tax, so far as measured by Section 2(b) of the Act is in violation of Article 9, Section 1, of the Constitution of the State of Minnesota, and in violation of Article XIV, Section 1, of the Amendments to the Constitution of the United States, and is therefore void.

18.

On or about July 10, 1933, the Tax Commission of the State of Minnesota assessed a specific tax against the plaintiff for the last half of the year 1933 in the sum of $19,760.00, and on or about July 20, 1934, assessed a specific tax against the plaintiff for the year 1934 in the sum of $16,505.00 and a gross sales tax for the last half of the year 1933 in the sum of $21,877.67, and on or about January 20, 1935, assessed a

[fol. 80] specific tax against the plaintiff for the year 1935 in the sum of $14,180.00 and a gross sales tax for the year 1934 in the sum of $45,222.51, making a total amount of tax assessed against the plaintiff under said act of $117,545.18.

The Auditor and Treasurer of said defendant demanded of plaintiff payment of each of said sums following the assessment of the same and threatened to enforce collection and payment thereof by levy upon and sale of plaintiff's personal property in the state.

Under such threat in each instance and under protest plaintiff paid the taxes so assessed as follows:

On or about January 20, 1934, specific tax for the last half of the year 1933 in the sum of $19,760.00, together with interest thereon in the sum of $1,194.90, and a gross sales tax for the last half of the year 1933 in the sum of $21,877.67, and specific tax for the year 1934 in the sum of $16,505.00, and on or about March 3, 1935, a specific tax for the year 1935 in the sum of $14,180.00 and gross sales tax for the year 1934 in the sum of $45,222.51, making a total amount of tax paid by plaintiff under said act, with interest, of $118,740.08.

19.

At the time of filing its return and making payment of the tax in January, 1934, plaintiff had in operation in the state and paid a specific tax as upon one hundred forty-two (142) [fol. 81] stores, and at the time of filing its return in January, 1935, plaintiff had in operation and thereafter on March 3, 1935 paid a specific tax as upon one hundred twenty-seven (127) stores, all at the rates prescribed by the act. Plaintiff had in operation in the state on July 1, 1934, only one hundred twenty-five (125) stores, and on July 1, 1935, only one hundred twenty-two (122) stores. On the assumption of the validity of the specific tax, therefore, plaintiff paid in excess of its liability $2,635.00 on account of the specific tax of 1934 and $775.00 on account of the specific tax of 1935.

Conclusions of Law

1

This act imposes a composite occupational tax upon persons engaged in conducting business within the state by a system of chain stores.

2

When the act was passed and amended it was, since that time and has been and now is within the power of the state legislature to impose the specific tax levied by the act.

3

The specific tax is valid with respect to the provision of Article 1, Section 2 of the State Constitution that "no member of this State shall be * * * deprived of any of the rights or privileges secured to any citizen thereof, unless [fol. 82] by the law of the land or the judgment of his peers."

4

The specific tax is valid with respect to the provision of Article 1, Section 7, of the State Constitution that "no person shall be deprived of life, liberty or property without due process of law."

5

The specific tax is valid with respect to the provision of Article 4, Section 34, of the State Constitution that all general laws "shall be uniform in their operation throughout the State."

6

The specific tax is valid with respect to the provision of Article 1, Section 7, of the State Constitution that "taxes shall be uniform upon the same class of subjects."

7

The classification of persons for the purposes of the act into such as conduct a retail business in a single store and such as conduct a retail business in two or more stores is a reasonable and valid classification. The subclassification of stores on the basis of the number within the state under a common ownership or control is a valid classification as a basis for the progressive specific tax.

The classification of persons conducting retail businesses by the system of voluntary chains or a different basis than [fol. 83] that of persons conducting retail businesses by the system of integrated chains is a reasonable and valid classification for the purpose of levying the specific tax imposed by the act.

The specific tax is valid with respect to the provision of Section 1 of the Fourteenth Amendment to the Constitution of the United States that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person or life liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

9

The classification made by the act, whereby cooperative organizations organized under the laws of the state (in good faith and not for the purpose or with the intent of evading the tax imposed by the Act) engaged within the state in the sale at retail by the chain store system of the same products and commodities as are sold by chain stores and in competition with them are exempted from the specific tax is a reasonable and valid classification.

10

The classification made by the act whereby persons engaged in business by the system of chain stores and selling to the extent of 95 per cent of total gross sales one or more of the following commodities: fuel, lumber, building ma- [fol. 84] terial, gasoline and oils, and grains are exempted from the specific tax is a reasonable and valid classification.

11

The provision of Section 2 (a) of the act which exempts from the specific tax one store of each person subject to the act is reasonable and valid.

12

The exemption of one store from the specific tax imposed by the act when such store is the only store within the state under a common ownership is reasonable and valid even when such store is owned by a chain having many stores outside of the state.

13

That provision of the act which imposes the same specific tax on a store which operate a whole year and a store which operates only a fraction of a year is reasonable and valid.

14

The provisions of the act imposing and providing for the collection of a gross sales tax are separable from the rest of the act.

15

The gross sales tax feature of said act, that is, the provisions imposing tax as defined and measured by Section 2(b), is unconstitutional as being in violation of Article 9, [fol. 85] Section 1, of the Constitution of the State of Minnesota, and in violation of Article XIV, Section 1, of the Amendments to the Constitution of the United States, and is therefore void.

16

Plaintiff is entitled to have and recover of the defendant the sum of $70,510.18, together with interest upon the sum of $24,512.67 from January 20, 1934, and upon the sum of $45,997.51 from and since March 3, 1934, all at the rate of six per cent per annum, together with plaintiff's costs and disbursements incurred in this action.

The amount found to be due plaintiff is comprised of the sum of $2,635.00 and $775.00 of specific tax paid by plaintiff in excess of its specific tax liability for the years 1934 and 1935 respectively; and the amounts of $21,877.67 and $45,222.51 gross sales tax paid by the plaintiff for the years 1933 and 1934 respectively.

Let Judgment Be Entered Accordingly.

January 24, 1938.

Richard D. O'Brien (signed), District Judge.

[fol. 86] In District Court of Ramsey County

Judgment

Pursuant to the Order for Judgment duly made in the above entitled action and filed on the 18th day of October, 1937.

Now, on motion of Doherty, Rumble, Butler, Sullivan and Mitchell, said Attorney , It is Hereby Adjudged that the Plaintiff herein recover of said Defendant State of Minnesota the sum of Eighty Eight

Thousand Two Hundred Fourteen and 92/100 Dollars damages with One Hundred Forty-two and 20/100 Dollars costs and disbursements, in all amounting to $88,357.12.

Signed this 4th day of April A. D. 1938.

N. C. Robinson, Clerk By A. B. White, Deputy Clerk.

[fol. 87] In District Court of Ramsey County

Notice of Appeal

To the above named plaintiff and to its attorneys; to Michael J. Doherty and William Mitchell, plaintiff's attorneys; to Messrs. Doherty, Rumble, Butler, Sullivan & Mitchell, attorneys; and to N. C. Robinson, Esquire, Clerk of District Court of Ramsey County:

Please Take Notice, that the above named defendant, State of Minnesota, appeals to the Supreme Court of the State of Minnesota from that certain judgment of the said District Court of Ramsey County, made and entered herein April 4, 1938, adjudging that the plaintiff herein recover of said defendant the sum of Eighty-eight Thousand, Three Hundred Fifty-seven and 12/100 ($88,357.12) Dollars.

William S. Ervin, Attorney General. Matthias N. Orfield, Deputy Attorney General. John A. Pearson, Assistant Attorney General, Attorneys for Defendant and Appellant, 102 State Capitol, St. Paul, Minnesota.

[fol. 88] In District Court of Ramsey County, Second Judicial District, State of Minnesota

Hahn Department Stores, Incorporated, Plaintiff,

vs.

State of Minnesota, Defendant

Complaint

Plaintiff for its complaint against the defendant alleges:

I

The Legislature of the State of Minnesota, at its session of 1933, enacted a statute entitled, "An Act raising reve-

nues, imposing a tax on conducting business by the system of chain stores for selling or otherwise disposing of goods, wares, articles or commodities at retail, with certain exceptions providing for the assessment and collection thereof, and for the distribution of the proceeds therefrom, providing penalties for failure to pay such tax, defining certain crimes in connection with the enforcement of such tax, and appropriating money for the administration of this Act". The Act was approved by the Governor of the State [fol. 89] on April 12, 1933, and is known as Chapter 213 of the laws of Minnesota for 1933. The Act purports to impose upon all who are engaged within the State in conducting a business by the so-called system of chain stores (as defined by the Act), from any of which are sold at retail any goods, wares, and merchandise an annual tax computed on two bases and consisting of, first, a specific tax per store (which will be referred to herein as the specific tax) and, second, a gross sales tax (which will be referred to herein as the gross sales tax), both graduated as hereinafter set out.

The Act provides that the specific store tax shall be determined as follows:

$5 for each store in excess of 1 and not in excess of 10;
$15 for each store in excess of 10 and not in excess of 20;
$35 for each store in excess of 20 and not in excess of 30;
$65 for each store in excess of 30 and not in excess of 40;
$105 for each store in excess of 40 and not in excess of 50;
$155 for each store in excess of 50.

The gross sales tax is imposed at the following rates on the combined gross sales of each taxable person, subject to exemption of sales of the products mentioned in the next following paragraph:

[fol. 90] 1/20 of 1% on gross sales up to $100,000;
2/20 of 1% on gross sales in excess of $100,000 up to $200,000;
3/20 of 1% on gross sales in excess of $200,000 up to $300,000;
4/20 of 1% on gross sales in excess of $300,000 up to $400,000;
5/20 of 1% on gross sales in excess of $400,000 up to $500,000;

6/20 of 1% on gross sales in excess of $500,000 up to $600,000;

8/20 of 1% on gross sales in excess of $600,000 up to $700,000;

10/20 of 1% on gross sales in excess of $700,000 up to $800,000;

12/20 of 1% on gross sales in excess of $800,000 up to $900,000;

15/20 of 1% on gross sales in excess of $900,000 up to $1,000,000;

1% on gross sales in excess of $1,000,000.

There is also excepted "cooperative associations organized under the laws of this State in good faith and not for the purpose or with the intent of evading the tax hereby imposed".

Each taxable person is permitted an exemption of one store of his own selection.

The taxes imposed by the Act are not in lieu of any other tax or form of taxation, but those within the terms of the Act are subject to this tax in addition to every other form of tax for which they were prior to the passage of the Act liable, including every other form of tax imposed upon [fol. 91] those engaged in retail business within the State who are exempted from the burden of the present tax.

Said Act was not adopted by the legislature in the exercise of the police power of the State. It does not purport to establish any standard of conduct for the business affected, and does not deal with nor affect any matter relating to public health, welfare, safety, or morals, nor provide for any supervision or inspection in relation thereto, and does not purport to be and is not in any aspect a police measure or regulation.

The business of selling at retail by the system of chain stores is not a proper subject of police regulation, and in any event is no more subject to and no more requires such regulation than the business of selling at retail otherwise than by the system of chain stores. The former is not in a class distinguishable from the latter for the purpose of the imposition of license fees or taxes.

The conduct of retail business by the system of chain stores as carried on in the State of Minnesota is not adverse or inimical to any interest of the people of the State, and does not in any manner or degree threaten or endanger

the public health, safety, morals, or general welfare. On the contrary, the conduct of such business is to the great economic advantage of the people of the State."

Said Act was adopted as and purports to be a taxation for revenue measure only.

The text of said Act in full is set forth in Exhibit A hereto attached and is hereby made a part hereof.

[fol. 92] Said Act was amended at an extra session of the legislature of said State held in 1933-1934. Said amendment became effective December 23, 1933, and is known as Chapter 16 of the laws adopted at said extra session. The text of said amendment is set forth in Exhibit B hereto attached and is hereby made a part hereof. Reference herein to the "Act" are to the Act as so amended.

In using herein the terms "chain stores", "system of chain stores", and "persons", the language of the Act is adopted, and the terms are used with the meaning as defined therein.

II

Plaintiff is and during and since 1929 has been the owner of all of the capital stock of The Golden Rule, Inc. and L. S. Donaldson Company, corporations organized under the laws of the State of Minnesota. During said time The Golden Rule, Inc. operated a retail department store in the city of Saint Paul, Minnesota, and L. S. Donaldson Company operated a retail department store in the City of Minneapolis, Minnesota. Plaintiff under the provisions of the Act selected The Golden Rule, Inc. store as exempt from tax and on account of the L. S. Donaldson Company store paid a specific tax for the last half of the year 1933 in the sum of $5.00 and a specific tax for the year 1934 in the sum of $5.00, and a gross sales tax for the last half of the year 1933 in the sum of $16,910.25, making a total sum so paid of $16,920.25.

[fol. 93]

III

The said Act, as plaintiff alleges, is null and void on its face, and especially by reason of the facts hereinafter alleged, because

(1) It is in violation of Article 1, Section 2, of the Constitution of the State of Minnesota, in respect of the provision thereof that "no member of this State shall be

deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers";

(2) It is in violation of Article 1, Section 7, of the Constitution of said State, in respect of the provision thereof that "no person shall be deprived of life, liberty, or property without due process of law";

(3) It is in violation of Article 4, Section 34, of the Constitution of said State, in respect of the provision thereof that all general laws "shall be uniform in their operation throughout the State";

(4) It is in violation of Article 9, Section 1, of the Constitution of said State, in respect of the provision thereof that "taxes shall be uniform upon the same class of subjects";

(5) It is in violation of Article XIV, Section 1, of Amendments to the Constitution of the United States in respect of the provision thereof that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdic-
[fol. 94] tion the equal protection of the laws".

IV

The tax imposed by the Act is not uniform in its operation throughout the State, and is not uniform on the same class of subjects, but rests upon a classification of subjects that is arbitrary, unreasonable, and discriminatory, and which bears no relation to any valid or legitimate purpose of this or any taxing act. By means of such classification the Act seeks to, and if enforced would, tax plaintiff and others coming within the scope of its terms, while exempting other subjects within the same taxable class but without the scope of its terms or expressly exempted. It seeks to, and if enforced would, impose the prescribed tax upon some conducting business at retail by the system of chain stores, such as the plaintiff, and exempt others likewise engaged in conducting business at retail by the system of chain stores. It purports to be a privilege or occupation tax, but applies to some and excludes others in the same occupation and exercising the same privilege. In the practical operation and effect of the Act the amount of the tax bears no

relation, either absolute or relative, to the value of the privilege for which the tax is exacted, and bears unequally and discriminately upon those to whom the Act applies, by reason, among others, of the great differences in the relative value of the privileges by them exercised for which the tax is imposed and by reason of great differences in [fol. 95] ability to bear the burden of the tax. The tax is imposed at different and discriminatory rates on members of the same taxable class, arbitrarily varied and graduated, without any reasonable or justifying basis for such differences in rates. While the Act purports to impose an occupation or privilege tax, the amount thereof as to plaintiff and many subject thereto is so oppressively excessive as to consume all profits which it is possible to derive from the operation of their businesses in the State, and the Act would therefore render the continued operation of such businesses impossible and would destroy the very occupation and privilege for the enjoyment of which the tax is exacted, and under the guise of taxation confiscate the property and destroy the property rights of plaintiff and others.

V

In the year 1929 (at the time of the taking by the Federal Government of the Fifteenth Decennial Census) there were engaged in selling at retail in the State of Minnesota (a) chain store owners; (b) single store owners who were associated together in so-called "voluntary chains", and (c) single store owners not so associated. The total number of retail stores in that year operated in Minnesota was 30,725, of which 4,174 were chain stores and 26,551 were single owned stores. Of the chain stores 810 were included in chains having two stores each and 286 were included in chains having three stores each. Only 769 were included [fol. 96] in so-called "national chains". The total volume of sales in that year made by all chain stores in the State was 16.22 per cent of the whole, of which 7.72 per cent of the whole was made by two and three store chains and 5.22 per cent was made by so-called "national chains". The proportions as to classes of stores and volume of sales obtaining since 1929 have not varied greatly from those of 1929. The so-called "voluntary chains" consist of groups of single retail store owners associated together (either with or without a wholesaler associate) mainly for the pur-

poses of cooperative buying, cooperative advertising, and group control of store operations. In 1932 7,830 single owned stores in the State were included in such "voluntary chains", which number, as plaintiff is informed and believes, has since increased.

The chains consisting of two or three stores in the State, of which there are more than one thousand in number, are for the most part operated by persons of small means and with very limited capital, and transact a relatively small volume of business. The great majority of such chains are owned and operated by individuals and copartnerships rather than by corporations. Such chains are far outnumbered by single stores doing a much larger business and having much larger buying power and much larger capital invested and available.

VI

There are engaged in the State of Minnesota various and sundry persons in retail business by the chain store system, [fol. 97] consisting, to the extent of more than ninety-five (95) per cent of total gross sales, of the sale of the following commodities, in some cases limited to one such commodity and in others combining two or more of such commodities, viz: fuel, lumber, building material, gasoline and oils, and grains, and such persons are engaged in such business in competition with others selling the same commodities at retail by the chain store system, but whose sales of such commodities, although large, do not equal ninety-five (95) per cent of the total gross sales of such persons. The business of both groups in the State is large and extensive. The classification contained in the Act (Sec. 1 (b)), whereby the specific tax is imposed upon the last named group of persons, and generally upon persons operating chain stores, but which exempts the first mentioned group from such tax, is based upon no difference germane to the purpose of the Act, and is unreasonable, arbitrary, and discriminatory.

VII

Various and sundry cooperative associations organized under the laws of Minnesota (in good faith and not for the purpose or with the intent of evading the tax imposed by the Act) are engaged in Minnesota in the sale, at retail, by the chain store system, of the same products and commodi-

ties as are sold by the plaintiff and other chain store owners and in competition with them and under substantially the same conditions. The classification provided in the Act (Sec. [fol. 98] 1 (b)), which excludes such associations from the tax but includes plaintiff and others by its terms subject thereto, is without basis, unreasonable, arbitrary, and discriminatory.

VIII

The amount of the specific tax is computed solely on the basis of the number of stores under a single or common ownership, supervision, or management on July 1 of each tax year, the amount of the tax being the same whether the store or stores taken as the basis of the tax be owned and operated for one day or for three hundred and sixty-five days or for any intermediate number of days during the tax year, thus discriminating against the person owning and operating chain stores or the maximum number of chain stores on July 1 and in favor of the person acquiring such stores after July 1, who may thereafter continue to operate such stores free from the specific tax unless and until he owns and operates such stores on July 1 of the following year.

IX

Although the amount of the specific tax is made to depend solely on the number of stores owned and operated on July 1 of each tax year, payment of the tax is required to be made on January 20 of the same tax year. Thus the Act seeks to impose and require payment of a tax the amount of which is impossible of determination.

[fol. 99] X

The classification of "persons" for the purpose of the Act into (1) those who conduct a retail business in a single store and (2) those who conduct a retail business in two or more stores, is arbitrary and without relation to the purposes of the Act and rests upon no difference or distinction as to kind of business, kind or character of goods sold, volume of business, amount or rate of profit or return, method of transacting or conducting business, management, location, or patronage. This is true whether the comparison be made between single stores, ordinary chain stores, or "voluntary chain" stores. In respect to such matters no one of the three groups men-

tioned has characteristics which set it part from either of the other two groups. No differences exist between the members of any group compared with another which do not also exist in equal degree between members of the same group.

The privilege of conducting two or more stores is not different in nature or degree from the privilege of conducting one store, and persons conducting single stores and those conducting two or more stores and those conducting stores who belong to "voluntary chains" all fall into a single class for the purpose of privilege taxation and there is no principle germane to a taxing act justifying a separate classification for any one of them.

XI

The said L. S. Donaldson store and the said Golden Rule store are independently managed and operated. The gross [fol. 100] sales of said two stores for 1933 were $4,899,823 and $5,[illegible]9,130 respectively. Other than said two stores plaintiff does not participate directly or indirectly in the ownership, control or management of any store in the State of Minnesota.

Five other department stores comparable in size and having business of like character and volume are operated in the City of Minneapolis in the same business district and in immediate and direct competition with the said Donaldson store. Three of these stores are members of national chains. One is a single owned store. One is owned in conjunction with two small shops located in outlying districts of the City constituting a chain within the definition of the Act. None of them is subject to any tax under the Act. The national chain stores are exempt because while operating many stores elsewhere they each operate only one store in Minnesota. The one owner subject to the Act selected the department store for exemption and by electing to pay on account of its two small shops escaped with a tax trifling in amount. The result is that although the Donaldson store is subject to competition from five single owned and chain department stores, all conducting like business in like volume and in like manner and enjoying and exercising privileges of the same character and of comparable value, the Donaldson store alone incurs any substantial tax under the Act, a liability which arises solely from the circumstance that the owner of the stock of the Donaldson

Company also owns the stock of The Golden Rule, Inc., [fol. 101] operating a store in another city.

Had plaintiff elected to pay on account of the Golden Rule store and selected the Donaldson store for exemption, an analogous situation would have been presented. The Golden Rule store is operated in competition with a national chain department store and several single owned department stores in Saint Paul, all of comparable size and kind with the Golden Rule and none of which is subject to the Act.

The various departments of the Donaldson store are operated in competition also with numerous single owned non-department stores engaged in the sale at retail of similar merchandise in the City of Minneapolis.

The definitions and classification in the Act, by virtue of which plaintiff is subjected to an onerous tax burden by reason of the ownership of the stock of the L. S. Donaldson Company and the latter's operation of a department store in Minneapolis while all of said competing stores and particularly all of said competing department stores in that City are, under the circumstances alleged, left free from all tax, characterize the exercise of the taxing power involved as arbitrary, capricious and discriminatory.

XII

The basing of rates upon gross sales as under Section 2 (b) of the Act naturally and inevitably produces inequalities and discriminations between persons subject to the [fol. 102] Act. It gives rise to a privilege tax which disregards the real factors which determine both the value of the privilege and the burden of the tax, such as net earnings or profits and ability to pay. In the field of retail chain store operations rates of profit in terms of percentages of gross sales for different kinds of business cover an extremely wide range: The rate for the kind of chain store business having the highest margin of profit is approximately fifty times as great as the rate for the kind of chain store business having the smallest margin of profit. The result is that any tax placed upon gross sales alone which establishes the same schedule of rates for all lines of chain store business, regardless of the relation between gross sales and profits, must of necessity create great inequality of tax burden and give rise to gross discriminations in its practical application and effect.

The discriminations resulting from adopting gross sales as the sole basis of the tax are greatly magnified by the graduation of the rates, the effect of which is to subclassify chain store systems according to the volume of their gross sales. The rates and amounts ascend in rapid progression. Thus, as compared with the rate applicable to annual gross sales of $100,000 or less, the rate as to annual gross sales from $500,000 to $600,000 is six times as great, and the rate as to annual gross sales in excess of $1,000,000 is twenty times as great. As compared with the tax of a person having annual gross sales of $100,000, a person having annual [fol. 103] gross sales ten times that amount ($1,000,000) pays a tax twenty-six times as great, and a person having sales fifty times that amount ($5,000,000) pays a tax eight hundred sixty times as great. If the gross sales tax had applied to the gross sales of the Donaldson store for the entire year 1933 ($4,899,823), the rate applicable thereto would have been seventeen times the rate of a taxpayer having gross sales for the year of $100,000 or less.

Up to certain moderate limits, increase in volume of gross sales may tend to increase the rate of profit, but the rate of increase is insignificant in comparison with the rate of increase of the gross sales tax rates, and the rate of increase of profit for any given chain reaches its maximum at gross sales far under $1,000,000 per annum. Beyond such limit profits, compared with gross sales, increase only in a simple arithmetical ratio.

The graduation of the gross sales rates in conjunction with the fact that the basic rates are based upon gross sales only operates to exact from plaintiff an amount of tax out of all proportion to the tax paid by others under the Act and out of all proper proportion to the total gross sales tax collected by the State considered in relation to the proportion of plaintiff's gross sales from said store to the total retail chain store gross sales in the State and out of all proportion to the value of the privilege which is the basis of the imposition. The sub-classification resulting in effect from such graduation of rates is justified by no basis in fact. [fol. 104] There are no corresponding differences between chains in point of profits, ability to pay, value of privilege, or other factual element relevant to a privilege taxing act.

XIII

The entire burden of the tax based upon said store and its gross sales must be treated and borne as an operating cost. All of the business of said store is carried on in direct competition with the department stores referred to in paragraph XI hereof and others exempt from the tax, and who therefore have no such operating expense to meet out of gross profit. The necessity of meeting this competition, as well as the competition of chain stores whose sales are subject to lower tax rates, precludes any increase in the price of goods sold at said store to make up the amount of the tax and thereby transfer the burden to the public or customers of said store.

XIV

The said Donaldson store and the Golden Rule store have always been and are now being efficiently managed and operated. Under normal conditions they have, generally speaking, been operated at a profit and, as plaintiff believes, they can and in the future will be operated at a profit if not subjected to the burden of said tax, but, as plaintiff is also informed and believes, notwithstanding efficiency in management, the amount of said tax will under any conditions that [fol. 105] can now be foreseen or reasonably anticipated consume entirely or substantially the whole of any profit which can be derived from the operation of whichever of said two stores may be elected for taxation under said Act.

The burden of said tax, combined with and aggravated by the gross inequalities and discriminations inherent in the practical operation of said taxing Act, will render impossible the continued operation of one of said stores otherwise than at a loss, and will necessitate the abandonment of the same at a great sacrifice and loss of investment therein, while other comparable competing stores, both chain and non-chain, because subject to little or no tax under the Act, can continue under normal conditions to be operated at a profit. Thus the enforcement of said Act will operate to deprive the plaintiff of its property and property rights without compensation and without due process of law and to deny to plaintiff the equal protection of the laws:

XV

For all of the foregoing reasons, plaintiff re-avers that the Act in question is in violation of the provisions of the Constitution of the State of Minnesota and of the provisions of the Constitution of the United States referred to in paragraph III hereof, and is therefore null and void.

XVI

On or about July 15, 1933, the Tax Commission of the [fol. 106] State of Minnesota, assuming to act under the authority of said Act, found and determined that the specific tax payable by the plaintiff under said Act for the year 1933 was the sum of $5.00, and assessed the tax against plaintiff at that amount.

On or about January 20, 1934, the said Commission found and determined that the amount of the specific tax payable by plaintiff under said Act for the year 1934 was the sum of $5.00, and assessed the tax against the plaintiff at that amount, and found and determined that the gross sales tax payable by plaintiff under said Act for the last six months of 1933 was the sum of $16,910.25, and assessed the tax against plaintiff at that amount.

The auditor and treasurer of said State demanded of plaintiff the payment of all of said sums and threatened to have the auditor issue his warrant under said Act to the sheriff of a county in which the plaintiff was doing business and had property, commanding the sheriff to levy upon and sell the real and personal property of the plaintiff for the enforcement of the payment and satisfaction of said tax.

Thereupon, and on or about January 20, 1934, the plaintiff, under protest, did pay the amount of said specific and gross sales taxes in the aggregate amount of $16,920.25, together with interest upon the specific tax for 1933 in the sum of thirty-five cents, making a total sum so paid of $16,920.60.

[fol. 107]

XVII

Said Act provides by Section 11 as amended that:

"A taxpayer who has paid, voluntarily or otherwise, or from whom there has been collected (other than by the method provided for in the first sentence of Section 10) any

tax not legally due or any amount of tax in excess of that legally due may (1) file with the Tax Commission a claim for the refund of such tax or such excess and/or (2) recover the same by an action at law against the State in any court of record. * * *"

Wherefore, plaintiff prays judgment against the defendant for the sum of Sixteen Thousand Nine Hundred Twenty and 60/100 Dollars ($16,920.60), together with interest thereon at the rate of six per cent per annum from and since January 20, 1934, together with plaintiff's costs and disbursements incurred in this action.

M. J. Doherty, W. E. Rumble, William Mitchell, Attorneys for Plaintiff, E-1006 First National Bank Bldg., Saint Paul, Minnesota.

Duly sworn to by B. Earl Puckett, jurat omitted in printing.

[fols. 108-119] Exhibit "A" omitted. Printed side page. 34 ante.

[fols. 120-121] Exhibit "B" omitted. Printed side page. 46 ante.

[fol. 122] In District Court of Ramsey County

Answer

Defendant for its answer to plaintiff's complaint herein:

I

Admits the allegations made in Paragraph I of plaintiff's complaint except the following allegations, which plaintiff denies:

[fol. 123] "Said Act was not adopted by the legislature in the exercise of the police power of the State. It does not purport to establish any standard of conduct for the business affected, and does not deal with nor affect any matter

relating to public health, welfare, safety or morals, nor provide for any supervision or inspection in relation thereto, and does not purport to be and is not in any aspect a police measure or regulation.

The business of selling at retail by the system of chain stores is not a proper subject of police regulation, and in any event is no more subject to and no more requires such regulation than the business of selling at retail otherwise than by the system of chain stores. The former is not in a class distinguishable from the latter for the purpose of the imposition of license fees or taxes.

The conduct of retail business by the system of chain stores as carried on in the State of Minnesota is not adverse or inimical to any interest of the people of the State, and does not in any manner or degree threaten or endanger the public health, safety, morals or general welfare. On the contrary, the conduct of such business is to the great economic advantage of the people of the State."

II

Defendant admits the allegations made in Paragraph II of plaintiff's complaint.

III

Defendant denies the allegations made in Paragraph III of plaintiff's complaint.

[fol. 124]

IV

Defendant denies the allegations made in Paragraph IV of plaintiff's complaint.

V

Defendant alleges that it does not have sufficient information to form a belief as to whether the allegations made in Paragraph V of plaintiff's complaint are true and for that reason denies said allegations.

VI

Defendant denies the allegations made in Paragraph VI of plaintiff's complaint.

VII

Defendant denies the allegations made in Paragraph VII of plaintiff's complaint.

VIII

Defendant admits the following allegations of Paragraph VIII of plaintiff's complaint:

"The amount of the specific tax is computed solely on the basis of the number of stores under a single or common ownership, supervision or management on July 1 of each tax year, the amount of the tax being the same whether the store or stores taken as the basis of the tax be owned and operated for one day or for three hundred and sixty-five days or for any intermediate number of days during the [fol. 125] tax year, * * *." Defendant denies all other allegations made in said paragraph.

IX

Defendant denies the allegations made in Paragraph IX of plaintiff's complaint.

X

Defendant denies the allegations made in Paragraph X of plaintiff's complaint.

XI

Defendant alleges that it does not have sufficient information to form a belief as to whether the allegations made in Paragraph XI of plaintiff's complaint are true and for that reason denies said allegations.

XII

Defendant alleges that it does not have sufficient information to form a belief as to whether the allegations made in Paragraph XII of plaintiff's complaint are true and for that reason denies said allegations.

XIII

Defendant alleges that it does not have sufficient information to form a belief as to whether the allegations made in Paragraph XIII of plaintiff's complaint are true and for that reason denies said allegations.

XIV

[fol. 126] Defendant alleges that it does not have sufficient information to form a belief as to whether the following

allegations made in Paragraph XIV of plaintiff's complaint are true and for that reason denies said allegations:

"The said Donaldson store and the Golden Rule store have always been and are now being efficiently managed and operated. Under normal conditions they have, generally speaking, been operated at a profit and, as plaintiff believes, they can and in the future will be operated at a profit if not subjected to the burden of said tax, but, as plaintiff is also informed and believes, notwithstanding efficiency in management, the amount of said tax will under any conditions that can now be foreseen or reasonably anticipated consume entirely or substantially the whole of any profit which can be derived from the operation of whichever of said two stores may be elected for taxation under said Act."

Defendant denies all other allegations made in said paragraph.

XV

Defendant denies the allegations made in Paragraph XV of plaintiff's complaint.

XVI

Defendant admits the allegations made in Paragraph XVI of plaintiff's complaint.

[fol. 127] XVII

Defendant admits the allegations made in Paragraph XVII of plaintiff's complaint.

XVIII

Defendant denies each allegation, matter and thing contained in plaintiff's complaint except as hereinbefore admitted, qualified or denied.

Wherefore, defendant prays judgment that plaintiff take nothing by this action and that defendant be allowed its costs and disbursements herein.

Harry H. Peterson, Attorney General, Matthias N. Orfield, Assistant Attorney General, Roger S. Rutchick, Assistant Attorney General, Attorneys for Defendant, 102 State Capitol, St. Paul, Minnesota.

Duly sworn to by Matthias N. Orfield. Jurat omitted in printing.

[fol. 128] IN DISTRICT COURT OF RAMSEY COUNTY

SUPPLEMENTAL COMPLAINT

Plaintiff for its supplemental complaint against the defendant herein alleges:

I

Since the commencement of this action the name of the plaintiff has, by an amendment of its articles of incorporation, been changed to and now is Allied Stores Corporation.

II

Under the provisions of Chapter 213, Laws of Minnesota, 1933, as amended, and for the purpose of the gross sales tax for the year 1934 under said Act, plaintiff (under protest that said Act is unconstitutional and invalid) selected The Golden Rule, Inc. store of Saint Paul, Minnesota, as exempt, leaving the L. S. Donaldson Company store at Minneapolis, Minnesota, unexempt.

[fol. 129] On or about January 20, 1935, the Tax Commission of the State of Minnesota found and determined that under said Act plaintiff's gross sales tax for the year 1934 was in the sum of $40,902.38 and that its specific tax for the year 1935 was in the sum of $5.00. The Commission assessed the tax against the plaintiff in said two amounts, and the Treasurer of the State of Minnesota demanded of the plaintiff payment thereof. Thereupon, and on or about January 22, 1935, plaintiff, under protest and under claim that the said Act was unconstitutional and invalid, did pay to the defendant the amount so assessed, being the aggregate sum of $40,907.38.

III

The total of all taxes paid to and collected by the State under said Act up to the date of this supplemental complaint is the sum of $619,150.45, consisting of $122,600.00 of specific tax and $496,550.45 of gross sales tax.

Wherefore, in addition to the amount for which it prayed judgment in its original complaint, plaintiff prays judgment against the defendant for the sum of $40,907.38, together

with interest thereon from and since January 22, 1935. In total plaintiff prays judgment against the defendant for the sum of $57,827.63, together with interest upon the sum of $16,920.25 from and since January 20, 1934, and upon the sum of $40 907.38 from and since January 22, 1935, all at the rate of six per cent per annum, together with plain-
[fol. 130] tiff's costs and disbursements incurred in this action.

November 20, 1935.

M. J. Doherty, W. E. Rumble, William Mitchell, Attorneys for Defendant, E-1006 First National Bank Bldg., Saint Paul, Minnesota.

Duly sworn to by M. J. Doherty. Jurat omitted in printing.

[fol. 131] IN DISTRICT COURT OF RAMSEY COUNTY

ANSWER TO SUPPLEMENTAL COMPLAINT

Defendant for its answer to plaintiff's supplemental complaint herein:

I

Admits the allegations contained in paragraphs I and II of plaintiff's said complaint.

II

Admits the allegations contained in paragraph III of plaintiff's said complaint.

Wherefore, defendant prays judgment that plaintiff take nothing by this action and that defendant recover its costs and disbursements herein.

Harry H. Peterson, Attorney General; Matthias N. Orfield, Deputy Attorney General; Roger S. Rutchick, Assistant Attorney General; Attorneys for Defendant, 102 State Capitol, St. Paul, Minnesota.

Duly sworn to by Matthias N. Orfield. Jurat omitted in printing.

[fol. 132] In District Court of Ramsey County

Order Amending Decision

The above entitled matter came before the Court on the 27th day of November, 1937, upon a motion by the plaintiff made upon the minutes of the Court for an order amending the findings of fact and conclusions of law constituting the Court's decision heretofore filed herein. M. J. Doherty, of Doherty, Rumble, Butler, Sullivan & Mitchell, appeared on behalf of the plaintiff, and Matthias N. Orfield, Deputy Attorney General, appeared on behalf of the defendant.

After hearing the arguments of counsel and after giving full consideration to the matter, it is hereby ordered that the decision of the Court heretofore filed be and it is hereby [fol. 133] amended by the substitution of the amended decision hereto attached, and that in so far as the amendments sought by plaintiff by its motion are embodied in said amended decision, the motion is granted, otherwise it is denied.

Dated January 24, 1938.

(Signed) Richard D. O'Brien, District Judge.

Further proceedings herein are stayed for a period of thirty days from the date hereof.

O'Brien, J.

In District Court of Ramsey County

Amended Decision

The above entitled action was tried to the Court without a jury commencing April 15 and concluding April 27, 1936, the plaintiff being represented by its attorneys, M. J. Doherty and William Mitchell, and the defendant being represented by Harry H. Peterson, Attorney General, Matthias N. Orfield, Deputy Attorney General, and Roger S. Rutchick, Assistant Attorney General.

The action was brought for the recovery by the plaintiff of the amount of taxes paid by it under the Minnesota Chain Store Act, Chapter 213 of the Laws of Minnesota for 1933, as amended by Chapter 16 of the Extra Session Laws of 1933-1934.

Having fully considered the evidence introduced at the

hearing of the case and the briefs and oral arguments of counsel the Court makes findings of fact as follows:

[fol. 134] FINDINGS OF FACT

1

The legislature of the State of Minnesota, at its regular session in 1933, enacted a statute entitled, "An act raising revenues, imposing a tax on conducting business by the system of chain stores for selling or otherwise disposing of goods, wares, articles or commodities at retail, with certain exceptions providing for the assessment and collection thereof, and for the distribution of the proceeds therefrom, providing penalties for failure to pay such tax, defining certain crimes in connection with the enforcement of such tax, and appropriating money for the administration of this act." This act was approved by the Governor on April 12, 1933, and is known as Chapter 213 of the Laws of Minnesota for 1933. The act purports to impose upon all who are engaged within the State of Minnesota in conducting a business by the system of chain stores (as the conducting of such a business is defined in the act) from any of which are sold at retail goods, wares and merchandise, an annual composite tax computed on two bases and consisting of (1), a specific tax per store (which will be designated in these findings as the specific tax) and a gross sales tax (which will be designated in these findings as the gross sales tax). Each of said units of said composite tax is graduated as set forth hereinafter.

Subject to the exceptions noted below the act provides that the specific tax shall be graduated as follows:

[fol. 135] $5 for each store in excess of 1 and not in excess of 10;

$15 for each store in excess of 10 and not in excess of 20;
$35 for each store in excess of 20 and not in excess of 30;
$65 for each store in excess of 30 and not in excess of 40;
$105 for each store in excess of 40 and not in excess of 50;
$155 for each store in excess of 50.

Subject to the exceptions noted below, the Chain Store Tax Act provides that the gross sales tax shall be graduated as follows:

1/20 of 1% on gross sales up to $100,000;
2/20 of 1% on gross sales in excess of $100,000 up to $200,000;

3/20 of 1% on gross sales in excess of $200,000 up to $300,000;

4/20 of 1% on gross sales in excess of $300,000 up to $400,000;

5/20 of 1% on gross sales in excess of $400,000 up to $500,000;

6/20 of 1% on gross sales in excess of $500,000 up to $600,000;

8/20 of 1% on gross sales in excess of $600,000 up to $700,000;

10/20 of 1% on gross sales in excess of $700,000 up to $800,000;

12/20 of 1% on gross sales in excess of $800,000 up to $900,000;

[fol. 136] 15/20 of 1% on gross sales in excess of $900,000 up to $1,000,000;

1% on gross sales in excess of $1,000,000.

Excepted from the act are persons conducting chain stores for the sale at retail of one or more of the following commodities:

"fuel, lumber, building material, gasoline and oils, and grain, if the gross sales of any such person from such produce or products shall, during any year for which the tax is imposed, equal or exceed 95 per centum of the total gross sales from all sources of any such person, * * *."

Also excepted are:

"cooperative associations organized under the laws of this State in good faith and not for the purpose or with the intent of evading the tax hereby imposed, * * *."

There is excepted from the gross sales tax of each person all of the sales made at one store of the owner's selection.

The taxes imposed by the act are in addition to every other form of tax for which the persons within the terms of the act were liable prior to the passage of the act.

Section 11 of this act was amended by Chapter 16 of the Extra Session Laws of 1933-1934, with reference to the recovery of money paid under the act which was not legally due. This amendment was approved by the Governor on December 23, 1933.

[fol. 137] All reference herein to the act will be to the

original act up to the time when it was amended and to the amended act thereafter. The terms, "chain stores" and "persons" are used with the meaning they are given in the act. "Chain store group" is used to mean an aggregation of retail stores under a common ownership, management or control.

2

The act in question is essentially a revenue measure. It went into effect on July 1, 1933. To the end of 1935 the following amounts were paid:

For the last half of 1933:	
Specific tax	$43,060.00
Gross sales tax	137,764.12
For the year 1934:	
Specific tax	$42,350.00
Gross sales tax	358,786.33
For the year 1935:	
Specific tax	$37,190.00

making a total of $619,150.45.

During this period three hundred twelve (312) chains filed reports and paid a tax. Of these two hundred sixteen (216) were corporations, thirty-five (35) partnerships, fifty-seven (57) individuals, and four (4) trustees and miscellaneous.

Of three hundred six (306) chains reporting for 1934, one hundred fifty-one (151) were two-store chains, fifty-six (56) [fol. 138] were three-store chains, twenty-four (24) were four-store chains, and two hundred seventy-eight (278) were chains of ten stores or less. Only eleven (11) were chains of more than twenty (20) stores, and only four (4) were chains of more than fifty (50) stores.

In respect to volume of sales four (4) reporting chains had aggregate sales of less than $10,000.00, eighteen (18) had aggregate sales of less than $25,000.00, fifty-three (53) had aggregate sales of less than $50,000.00, one hundred eleven (111) had aggregate sales of less than $100,000.00, one hundred eighty-five (185) had aggregate sales of less than $200,000.00, and two hundred thirteen (213) had aggregate sales of less than $300,000.00. Only fifteen (15) had aggregate sales of over $1,000,000, and only four (4) had aggregate sales in excess of $4,000,000.00.

3

Throughout the period concerned in this action there were engaged in selling at retail in the State of Minnesota (a) persons operating chain store systems, (b) persons operating single stores but associated together in so-called co-operative or voluntary chains, and (c) persons operating single stores and not so associated. The figures for eighteen of the most important lines of retail business in the State show that in 1929 13.5 per cent of the total volume was done by chain stores and 79.3 per cent by single stores, and in 1933 17.8 per cent was done by chain stores and 76.8 per cent by single stores. The remainder is accounted for by mail [fol. 139] order business, house to house sales, and miscellaneous. In 1933 the number of stores operated by chains was 2,881 and the number operated by single store owners was 30,416. For the entire United States the figures were: 1929, chains 20 per cent, single stores 77.5 per cent; 1933, chains 25.2 per cent, single stores 71.2 per cent.

4

Many kinds of retail business are carried on in Minnesota by the chain store system. The volume of sales per store in different kinds of business varies considerably and there are considerable variations in average sales per store and in average profits per store in chain store groups selling substantially the same kinds of merchandise, but generally the chain store groups having the largest number of stores make a larger profit than chain store groups selling substantially the same kind of merchandise and having a smaller number of stores. Generally, but by no means always, profits per chain store in the same line of business tend to increase with the number of stores in a chain.

5

At the time of and at all times subsequent to the adoption of the act the system of selling goods by the system of chain stores as carried on in Minnesota differed from the system of selling goods in independently owned stores not associated in voluntary chains, in many ways, and had the following advantages over the latter system:

[fol. 140] (1) The chain store groups buy goods in larger quantities and thereby secure larger quantity discounts than independent stores.

(2) The chain store groups have greater financial power and thereby are enabled to take advantage of cash discounts in many cases not available to independent stores.

(3) The chain store groups receive substantial special rebates and advertising allowances generally not granted to independent stores.

(4) The chain store groups make use of central warehousing and thereby effect economies in warehousing not available to independent stores.

(5) The chain store groups deliver a considerable portion of their goods from their warehouses to their several stores in full truck lots and thereby effect economies in delivery expense not available to independent stores.

(6) The chain store groups have more abundant capital and therefore have better credit and pay lower interest rates than independent stores.

(7) The chain store groups maintain research divisions which give them advance information about many things useful in buying and selling goods, such as, impending price changes and location of favorable buying markets. They also have greater skill in buying so as to keep the stores stocked with goods suitable in price, style and quality to the purchasing demand.

(8) The chain store groups have a more rapid turnover than independent stores.

(9) The chain store groups, particularly in the larger [fol. 141] cities, enjoy advertising advantages over independent stores in being able to advertise sales at several stores in the same advertisement, thereby cutting down the cost of advertising.

(10) The chain store groups use a more or less standardized method of displaying goods which has advantages in advertising and in making sales over the methods employed by independent stores.

(11) The chain store groups equip their stores with standardized equipment and in this manner effect economies in the cost of equipment and in the usefulness of equipment in case a store is discontinued.

(12) The chain store groups maintain stores only in cities and villages that have been proved to be good centers for the sale of their goods. They do no pioneering as do independent stores.

(13) Each store in a chain store group profits from the good will built up by other stores in the same system.

(14) In the past prior to the passing of the unfair trade practices act in Minnesota in 1937 chain stores have injured competitors and extended their own business by the use of loss leaders.

(15) Chain store groups manufacture and otherwise produce the goods they sell to a far greater extent than do independent stores and thereby effect economies in the cost of these goods.

(16) Chain store groups open stores only in the better locations in each city and thereby enjoy location advantages in selling goods.

Chain store groups enjoy most of the foregoing chain [fol. 142] store advantages over stores which are members of voluntary chains.

6

There are in the state various persons engaged in business by the chain store system each of whom sells to the extent of 95 per cent of its gross sales one or more of the following commodities: fuel, lumber, building material, gasoline and oils, and grains. The character of the business of such persons differs materially from the character of the business of persons subject to the chain store tax. The classification of such persons as not subject to the specific tax is reasonable classification.

7

There are in the state various co-operative associations organized under the laws of the state (in good faith and not for the purpose or with the intent of evading the tax imposed by the act) who are engaged in the sale at retail by the chain store system, of the same products and commodities as are sold by plaintiffs and other chain store owners and in competition with them. Such associations differ in purpose, form of organization, and methods of do-

ing business from the chain store organizations subject to the tax. The classification of such persons as a group not subject to the specific tax is reasonable classification.

8

The exemption from the specific tax of a single chain store, a member of a chain store group operating in other states, [fol. 143] is based upon a reasonable classification.

9

The exemption of one store in each chain from the specific tax is based upon a reasonable classification.

10

The specific tax imposed by the act is uniform in its operation throughout the state and is uniform on the same class of subjects.

11

The specific tax for the year 1933 fell due July 1, 1933, for each year thereafter the specific tax fell due on January 20 of the year following the year for which it was payable.

12

The specific tax can readily be collected without also collecting the gross sales tax.

13

The plaintiff is a corporation, and during and since 1929 has been the owner of all the capital stock of The Golden Rule, Inc. and L. S. Donaldson Company, corporations organized under the laws of the State of Minnesota, and if the Act be valid the plaintiff is subject to the tax thereby imposed. At the commencement of this action the name of the plaintiff was Hahn Department Stores, Incorporated. [fol. 144] Since then the name of the plaintiff has been changed to Allied Stores Corporation. Since 1929 and before, The Golden Rule, Inc. operated a retail department store in the city of Saint Paul, Minnesota, and L. S. Donaldson Company operated a retail department store in the city of Minneapolis, Minnesota.

From 1929 to 1934 the L. S. Donaldson Company and The Golden Rule, Inc. had a rate of net profit in percentage of

gross sales as follows (Profit is indicated by "P" and Loses by "L"):

Year	L. S. Donaldson Company	The Golden Rule, Inc.
1929	L. 10.11	L. 1.26
1930	" 7.48	P. 0.51
1931	" 9.02	P. 0.55
1932	" 13.27	L. 3.97
1933	" 8.10	P. 0.17
1934	" 3.25	L. 1.30

The total result of the six years' operations by The Golden Rule, Inc. was a net loss.

The average net profit or loss ratios of department stores generally for the years 1932, 1933 and 1934 were as follows, the stores being grouped according to sales volume per store:

Sales Volume	1932	1933	1934
$500,000 to $1,000,000	L. 7.9	L. 0.7	P. 1.3
$1,000,000 to $2,000,000	L. 6.6	P. 0.4	P. 0.8
$2,000,000 to $5,000,000	L. 5.3	L. 0.8	P. 0.1
$5,000,000 to $10,000,000	L. 5.5	L. 1.5	P. 0.4
Over $10,000,000	L. 6.1	L. 1.1	L. 0.6

[fol. 145] 14

Both The Golden Rule store and the L. S. Donaldson Company store are operated in competition with untaxed other department stores and specialty stores in Saint Paul and Minneapolis, some of which are members of voluntary chains and some are members of national ownership chains operating but one store in Minnesota.

15

As in the case of plaintiff and its competitors, it is true generally that sales made by persons taxed under any brackets of the Act are made in competition with like sales of the same character of merchandise made by persons who are taxed under other brackets of the Act.

The gross sales tax is laid as an excise upon individual sales. As each sale is made liability for tax upon that sale arises. Different sales, however, take different rates, though they be of identical articles or merchandise and be made in

identical manner. The rate upon any sale depends upon the number and size of sales already made in the current year. The Act therefore taxes different persons at different rates for the privilege of doing the same act, and taxes the same person at different rates for the exercise of the same privilege at different times, depending upon the number of times it has previously been exercised in a given year.

[fol. 146]

16

In Minnesota, as elsewhere, there is no constant or uniform relation between volume of gross sales and amount or rate of net profit. There are wide variations in the profit margins as between different kinds of business and different kinds of merchandise; also wide differences in the rate of net profit made by different concerns in the same line of business for any given period; also wide variations in the rate of profit made by the same concern or concerns in any given line of business from year to year and from time to time. A great many factors enter into the result, among which may be mentioned efficiency of management, form of organizations, expenses of operation, competitive conditions, character of community, type of patrons, proportion of high and low profit margin goods sold, and trend of commodity prices.

17

In the light of the foregoing findings the gross sales tax is arbitrary, unreasonable, unequal, and discriminatory, and the classification of chain store systems or concerns according to the volume of their gross sales (resulting from the graduation of the gross sales tax rates) is without relation to the purpose of the Act and without relation to the value of the privilege for which the tax is enacted, and the imposition of the tax, so far as measured by Section 2 (b) of the Act is in violation of Article 9, Section 1, of the Constitution of the State of Minnesota, and in violation of Article [fol. 147] XIV, Section 1, of the Amendments to the Constitution of the United States, and is therefore void.

18

On or about July 15, 1933, the Tax Commission of the State of Minnesota assessed a specific tax against the plaintiff, Allied Stores Corporation, the name of which was then

Hahn Department Stores, Incorporated for the year 1933 in the sum of $5.00 and on or about January 20, 1934, assessed a specific tax against the plaintiff for the year 1934 in the sum of $5.00 and a gross sales tax for the last six months of the year 1933 in the sum of $16,910.25, and on or about January 20, 1935, assessed a specific tax against the plaintiff for the year 1935 in the sum of $5.00 and a gross sales tax for the year 1934 in the sum of $40,902.38, making a total of taxes assessed against the plaintiff under the said act of $57,827.63.

The Auditor and Treasurer of said defendant demanded of plaintiff payment of each of said sums following assessment of the same and th-eatened to enforce collection and payment thereof by levy upon and sale of plaintiff's personal property in the State.

Under such threat in each instance and under protest plaintiff paid the taxes so assessed as follows:

On or about January 22, 1934, specific tax for the last half of the year 1933 in the sum of $5.00, together with interest in the sum of thirty-five cents, and specific tax for the [fol. 148] year 1934 in the amount of $5.00 and a gross sales tax for the last half of the year 1933 in the amount of $16,910.25, and on or about January 23, 1935, a specific tax for the year 1935 in the sum of $5.00 and a gross sales tax for the year 1934 in the sum of $40,902.38, making a total amount of tax paid by plaintiff under said Act, with interest of $57,827.98.

Conclusions of Law

1

The act imposes a composite occupational tax upon persons engaged in conducting business within the state by a system of chain stores.

2

When the act was passed and amended it was, since that time and has been and now is within the power of the state legislature to impose the specific tax levied by the act.

3

The specific tax is valid with respect to the provision of Article 1, Section 2 of the State Constitution that "no member of this State shall be * * * deprived of any of the

rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers."

4

The specific tax is valid with respect to the provision of [fol. 149] Article 1, Section 7, of the State Constitution that "no person shall be deprived of life, liberty or property without due process of law."

5

The specific tax is valid with respect to the provision of Article 4, Section 34, of the State Constitution that all general laws "shall be uniform in their operation throughout the State."

6

The specific tax is valid with respect to the provision of Article 9, Section 1, of the State Constitution that "taxes shall be uniform upon the same class of subjects."

7

The classification of persons for the purposes of the act into such as conduct a retail business in a single store and such as conduct a retail business in two or more stores is a reasonable and valid classification. The subclassification of stores on the basis of the number within the state under a common ownership or control is a valid classification as a basis for the progressive specific tax.

The classification of persons conducting retail businesses by the system of voluntary chains on a different basis than that of persons conducting retail businesses by the system of integrated chains is a reasonable and valid classification for the purpose of levying the specific tax imposed by the act.

[fol. 150]

8

The specific tax is valid with respect to the provision of Section 1 of the Fourteenth Amendment to the Constitution of the United States that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

9

The classification made by the act, whereby cooperative organizations organized under the laws of the state (in good faith and not for the purpose or with the intent of evading the tax imposed by the Act) engaged within the state in the sale at retail by the chain store system of the same products and commodities as are sold by chain stores and in competition with them are exempted from the specific tax is a reasonable and valid classification.

10

The classification made by the act whereby persons engaged in the business by the system of chain stores and selling to the extent of 95 per cent of total gross sales one or more of the following commodities: fuel, lumber, building material, gasoline and oils, and grains are exempted from the specific tax is a reasonable and valid classification.

[fol. 151]

11

The provision of Section 2 (a) of the act which exempts from the specific tax one store of each person subject to the act is reasonable and valid.

12

The exemption of one store from the specific tax imposed by the act when such store is the only store within the state under a common ownership is reasonable and valid even when such store is owned by a chain having many stores outside of the state.

13

That provision of the act which imposes the same specific tax on a store which operates a whole year and a store which operates only a fraction of a year is reasonable and valid.

14

The gross sales tax feature of said Act, that is, the provisions imposing tax as defined and measured by Section 2 (b), is unconstitutional as being in violation of Article 9, Section 1, of the Constitution of the State of Minnesota and in violation of Article XIV, Section 1, of the Amendments to the Constitution of the United States, and is therefore void.

The plaintiff is entitled to have and recover of the defend-
[fol. 152] ant the sum of $57,812.63, together with interest upon the sum of $16,910.25 from January 22, 1934, and upon the sum of $40,902.38 from January 23, 1935, all at the rate of six per cent per annum, together with plaintiff's costs and disbursements incurred in this action.

Let judgment be entered accordingly.

Richard D. O'Brien, District Judge.

January 24, 1938.

In District Court of Ramsey County

Order for Judgment

Pursuant to the Order for Judgment duly made in the above entitled action and filed on the 18th day of October, 1937.

Now, on motion of Doherty, Rumble, Butler, Sullivan & Mitchell, said Attorneys, it is hereby adjudged that the Plaintiff herein recover of said Defendant State of Minnesota the sum of Seventy-two Thousand Three Hundred Thirty-two and 61/100 Dollars damages with Fourteen and no/100 Dollars costs and disbursements, in all amounting to $72,346.61.

Signed this 4th day of April, A. D. 1938.

N. C. Robinson, Clerk, by A. B. White, Deputy Clerk.

[fol. 153] In District Court of Ramsey County

Notice of Appeal

To the above named plaintiff and to its attorneys; to Michael J. Doherty and William Mitchell, plaintiff's attorneys; to Messrs. Doherty, Rumble, Butler, Sullivan & Mitchell, attorneys; and to N. C. Robinson, Esquire, clerk of District Court of Ramsey County:

Please take notice, that the above named defendant, State of Minnesota, appeals to the Supreme Court of the State of Minnesota, from that certain judgment of the said

District Court of Ramsey County, made and entered herein April 4, 1938, adjudging that the plaintiff herein recover of said defendant the sum of Seventy-two Thousand Three Hundred Forty-six and 61/100 ($72,346.61) Dollars.

William S. Ervin, Attorney General, Matthias N. Orfield, Deputy Attorney General, John A. Pearson, Assistant Attorney General, Attorneys for Defendant and Appellant, 102 State Capitol, St. Paul, Minnesota.

[fol. 154] In District Court of Ramsey County

Settled Case

These cases came on for trial before the Hon. Richard D. O'Brien, J., on the 15th of April, 1936, without a jury, Messrs. Doherty, Rumble, Butler, Sullivan & Mitchell appearing on behalf of plaintiffs and Harry H. Peterson, Attorney General, Matthias N. Orfield, Deputy Attorney General and Roger S. Rutchick, Assistant Attorney General appearing for defendant.

Mr. Doherty: We would like to move to amend the complaint to substitute 'Allied Stores Corporation' in place of Hahn Department Store, Inc.

The Court: Amendment may be allowed.

Opening Statement to the Court by Mr. Doherty

Mr. Doherty: Plaintiffs' Exhibit A, if the Court please, is an analysis of all the returns filed with the State Tax Commission by all chain stores in Minnesota who have made returns to the Tax Commission under which all taxes so far paid, or paid up to at least January 1, 1936, were paid under this act. The analysis shows the name of the chain, headquarters, kind of business engaged in, whether conducted by a corporation, individual, partnership, association or otherwise and for the years 1934 and 1935, the number of taxable stores reported, amount of total tax, taxable gross sales, exempt gross sales and total tax. The same for the years 1934 and 1935 as far as the specific tax is concerned. [fol. 155] It has been agreed that this may be received in evidence as a correct analysis of the returns filed with the Tax Commission.

Mr. Orfield: At this time the State objects to the introduction of any evidence on the part of plaintiffs on the ground that the complaint fails to set forth a cause of action against the State.

The Court: Denied at this time.

Mr. Orfield: The State further objects to the introduction of this particular evidence on the ground that it is immaterial in this case.

The Court: It may be received on the theory of the Plaintiffs' actions.

Mr. Doherty: Plaintiffs' Exhibit B is an identical copy of the Fifteenth Decennial Census of the United States, census of retail distribution. There are certain pages in the census which we deem are material as a foundation for other facts which will be offered in evidence. Therefore, we offer in evidence from Exhibit B, first the certificate of the Secretary of Commerce, the cover page, explanatory of what the census report is; that portion of page 6 under the caption 'Types of operation,' which explains the terminology used in the report; table 5-A on page 20, which sets out the different types of operation in the State of Minnesota with the number of stores, personnel, expenses, stocks and sales; all of table 6 on page 22, which gives an analysis of 17 kinds of businesses conducted in the State of Minnesota showing the number of single-store independents, two and three store independent and local branch systems, local chains, sectional chains, national chains and other types of business.

[fol. 156] The Court: Received without objection.

Mr. Doherty: Offer in evidence Plaintiffs' Exhibit C, another report of the census department, being entitled 'Census of American Business, Retail Distribution, 1933, Chains and Independents and Other Types of Operation.' From Exhibit C I wish to offer in evidence the certificate of the Secretary of Commerce, the cover page explanatory of the contents of the report; the first paragraph of the first inside page further explanatory with the report, beginning with: 'This is one of a series of reports,' and ending with 'the year 1933'; page 1-A, the first three paragraphs of page 1-B; table 3 on pages three and four. On page three, there is a pencil correction of one number which was made by the census department before it came to me. Table 3 on pages 47 and 48.

The Court: Received without objection.

Mr. Doherty: Offer in evidence Plaintiffs' Exhibit D, a report of the Bureau of census entitled 'Census of American Business, 1933—Retail Distribution, Volume 1' and offer in evidence certificate of the Secretary of Commerce and the cover page as explan-tory of the contents of the report; on page 30 we wish to offer all of the matter on that page down to and including "Total, all chains," and the figures opposite those words; on page 59 the figures for the State of Minnesota under the hearing 'Lumber and Building Material.'

The Court: Received without objection.

[fol. 157] WALDEMAR JOHN LARSON, sworn on behalf of plaintiffs, testified.

Examined by Mr. Doherty:

Q. You live where?

A. No. 4133 Garfield Ave. South, Minneapolis.

Q. How long have you lived in Minneapolis?

A. Three years.

Q. What is your present position?

A. Branch manager of the National Tea of the Minnesota Unit.

Q. That is a corporation of what state?

A. Delaware.

Q. In what states does the National Tea of Delaware operate?

A. Western portion of Wisconsin, Minnesota, North and South Dakota.

Q. In which state is the larger portion of its business?

A. Minnesota.

Q. Can you give us the number of stores operated in Minnesota and the other three states?

A. In Minnesota, 123 stores as of December 31, 1935, six in Wisconsin, nine in North Dakota and eight in South Dakota.

Q. What is the business of the National Tea Company?

A. The business is a retail food store embracing fresh fruits, vegetables, groceries and meats.

Q. Do you sell meats in all your stores?

A. No, not fresh meats.

Q. Can you tell us about what percentage sell meats?

[fol. 158] A. About 50%.

Q. How long have you been connected with the National Tea in any capacity?

A. Three years as branch manager.

Q. What was your business experience prior to that time?

A. I was in the general advertisement business with an Eastern corporation, Grand Union Company of New York City.

Q. For how long?

A. For twelve years.

Q. With respect to the distribution of your stores in Minnesota, what is the fact as to whether or not they are concentrated in particular localities or distributed generally throughout the state?

A. They are distributed generally throughout the state. We have 71 in Minneapolis and the balance are in every portion of the state.

Q. In small towns or large towns, or how?

A. Probably the smallest town we operate in is Waterville, Minnesota. I believe the population is 1100.

Q. Can you give us an idea of the size of the stores, the amount of average sales?

A. The largest store would do a $54,000 a year business, the smallest $15,000 and the average would be about $42,000.

Q. What is the fact whether or not these stores are operated individually, whether you keep a separate account of each store throughout your system?

A. They are kept separately.

[fol. 159] Q. So you can tell what the profit of any individual store is throughout the year?

A. Yes.

Q. What is the fact with respect to whether you operate these stores generally in competition with other stores? Are you in competition with other stores in the same line of business?

A. Yes, we are.

Q. Do you have that competition in certain places or in all locations?

A. I would say we have a competitor in any location we operate.

Q. As to the form of business organizations with which you have competition, what different forms of organizations do you come in competition with?

A. We come in competition with every form.

Q. What are they?

A. Other corporation chains, volunteer groups, retail and wholesale groups, independent stores, department stores in certain lines.

Q. In most of your locations, you come in competition with each of these different forms of organization?

A. Yes.

Q. When you speak of a volunteer chain, what do you mean?

A. That is a wholesaler who has grouped together a number of individual merchants and those individual stores usually do the greater portion of their buying from that same wholesaler.

Q. They are a group or association of individually owned stores?

[fol. 160] A. Yes.

Q. For certain co-operative purposes?

A. Yes.

Q. When you speak of competition with chains, so we will understand, have you in mind the chain as defined in the Minnesota Act, as any individual or corporation operating two or more stores?

A. Yes.

Q. Do your competitors include chains of different sizes with respect to different size and volume of business?

A. Yes, there is a great difference, ranging from Red Owl,—I would estimate they have 60 in Minnesota,—down to Harts in Thief River Falls. I think they have seven stores.

Q. Do you have competition with chains as small as two stores?

A. Yes, but I cannot think of the names of them.

Q. Some of your supervisors would have more detailed information about that than you?

A. They would have.

Q. Is it possible for you to determine on January 1st of any year, how many stores you are going to have in operation on July 1st of the following year?

A. Not exactly, fairly approximately.

Q. Give us some idea of the variations that do occur, talking about Minnesota.

A. You mean if I could tell now how many stores we will have in July of this year?

Q. If you could have told in January?

[fol. 161] A. No, there are too many factors involved. Sometimes there are places in Minnesota we would like to locate, but there is no opportunity for them. There are stores we may decide to close between January and July for various reasons.

Q. Take the last year for which you paid a gross sales tax. How did the number of stores in operation on January 20th compare with those in operation on July 1, 1935?

A. There was a difference, but I don't remember what it was. I haven't those figures with me, but there was a decided difference.

Q. Do you have in mind, Mr. Larson, the rate of tax you paid for 1933 and 1934 in terms of your total gross sales of the State?

A. If they were reflected in our cost of operation?

Q. Yes, take 1934 or any year and can you give us your specific tax, gross sales tax and tell us what percentage of your gross sales that amounted to?

A. The total figure was 1.16%. That was the combination of specific and gross sales. That was divided by .312 for the specific portion of that tax and .854 for the gross sales.

Q. For what year?

A. 1934.

Q. Do you know what the result would be for 1935?

A. That would be very close to these figures I would say.

Q. Can you say, as a matter of practical business opera-

[fol. 162] tion, whether the amount of your tax could have been successfully added to the purchase price of the goods sold and passed on to the customer?

A. I do not feel that the competitive condition would permit that.

Q. Have you observed, Mr. Larson, the trend in the growth of co-operative chains in Minnesota since you have been here?

A. Not particularly closely, but I do know they have been growing. For instance, I have noticed there is a store marked 'co-operative' which has opened on Lake Street in Minneapolis, but do not know the type of operation it might be. I know we come in competition with co-operatives particularly on the range in Minnesota.

Q. You last spoke of a co-operative chain and I have been using the word 'volunteer chain.' In my understanding there is a great difference in co-operative and volunteer chains?

A. I am speaking of a strictly co-operative business. My interpretation of co-operative is a store which shares its profits with its customers or they sell stock to their customers.

Q. My question was intended to relate to volunteer chains. Have they been growing, if your observation has been sufficiently extensive so you feel you can make a statement?

A. I have noticed where some stores have opened, but whether or not that has been off-set by closing stores. I would not be able to say.

Q. You have no statistics on that?

[fol. 163] A. No, I have not.

Mr. Doherty: That is all.

Cross-examination.

By Mr. Orfield:

Q. You stated that the average sales of National Tea stores is about $42,000 a year?

A. That is true.

Q. Are you familiar with the average sales of independent groceries stores for corresponding years?

A. No, I am not.

Q. Would you know whether it would be greater or less?

A. I would not know.

Mr. Orfield: That is all.

JOHN J. BOSIGER, sworn on behalf of plaintiffs, testified.

Examined by Mr. Doherty:

Q. You live in Minneapolis?

A. I do.

Q. What is your business?

A. I am accountant for the National Tea Company here.

Q. What do you mean by 'here?'

A. Minneapolis National Tea, a Delaware corporation.

Q. You mean for all the territory in which the Delaware corporation operates?

A. Yes.

[fol. 164] Q. The territory referred to by Mr. Larson, Minnesota and the other three states?

A. Yes.

Q. How long have you been accountant for them?

A. I have been accountant for them here for about eight years.

Q. And prior to that?

A. I was accountant in Chicago for them for about seven years.

Q. What are your duties, generally speaking?

A. I have charge of the general books of account, I prepare financial statements or they are prepared under my supervision, tax returns and so on.

Q. Are all the books of account under your charge, as far as this territory is concerned?

A. Yes.

Q. I show you Plaintiff's Exhibit E, Mr. Bosiger, and ask you what that is?

A. That is a statement showing the earnings of our company for Minnesota, for the years 1923 to 1934 inclusive.

Q. This was made up from the books and records of the Minneapolis office of the National Tea Company?

A. Yes.

Q. Which have been kept under your supervision all this time?

A. Not from 1923. I started with them here in 1928.

Q. Since you have been here, since 1928, have you had [fol. 165] occasion to use and refer back to the earlier records running back to 1923?

A. I don't remember the occasions, but I surely did.

Q. Are these books and records of the National Tea kept truly and accurately and correctly, to the best of your knowledge?

A. They are.

Q. This statement was made up by you or under your supervision?

A. Partly by me and partly under my supervision.

Q. Does this statement clearly and correctly reflect the statistics on the matters it purports to cover?

A. It does.

Q. This is for the Minnesota stores only?

A. That is right.

Q. How are your books kept with reference to Minnesota and the other three states in which the Delaware Corporation operates, whether the Minnesota business is recorded in a separate set of books or whether you have one set for the three states?

A. We have only one general ledger for the entire unit.

Q. To what extent do you keep separate records for individual stores?

A. We have an individual profit and loss record for each individual store.

Q. In taking up this statement showing the result of the Minnesota stores, are there any of the items on here allo- [fol. 166] cated to Minnesota on a pro rata basis or are they all true records of Minnesota operations?

A. They are all prorated, the sales were actual.

Q. And they have nothing to do with the balance of the three states?

A. No.

Q. Take the item of cost of sales. How do you arrive at that?

A. By taking the ratio of sales in Minnesota to the entire company sales and prorate the cost of sales according to that ratio.

Q. What does 'cost of sales' mean?

A. The purchases plus the cost of merchandising into our warehouse.

Q. But has nothing to do with the expense of operation?

A. No, nothing.

Q. And that cost of operation is prorated among stores between Minnesota and the other states on the basis of goods sold to the stores or on the basis of sales?

A. On the basis of sales from the stores.

Q. 'Operating expense,' how arrived at?

A. In the same manner.

Q. Is that all operating expense or is that general overhead?

A. It is all operating expense.

Q. Of each individual store?

A. Yes.

Q. On this last column you have '% net profit to sales,' for each of these years. Do those percentages vary sub-

[fol. 167] stantially from the percentages for all the territory in which the Delaware Corporation operates?

A. Do you mean between different sections of the territory?

Q. No, I mean to compare these figures for Minnesota, the percentages of profit for Minnesota alone, whether they differ substantially from the percentages of profit for the entire four states?

A. They might at one particular time or other, but generally speaking they would not vary very much.

Mr. Doherty: Offer in evidence Plaintiff's Exhibit E.

Recess until 2 P. M.

By Mr. Orfield:

Q. Mr. Bosiger, in preparing this earnings statement, did you do all the calculating yourself?

A. No.

Q. How were the calculations made?

A. By bookkeepers in the office and myself, some by bookkeepers and some by myself.

Q. Did you check them so you can say of your own knowledge that the calculations are correct?

A. No, I did not check them.

Q. What is your reason for believing they are correct?

A. Because they tie in with the total figures as shown by our records and I have every reason to believe they are accurate because these people are experienced.

Q. But it is a fact, is it not, that you are taking some-[fol. 168] body else's word for the correctness of this statement?

A. Yes.

Q. When did you become accountant for the National Tea of Delaware?

A. In 1928.

Q. The period covered by this statement is from 1923 to 1934?

A. That is correct.

Q. It covers the six years from 1923 to 1928 before you became accountant when you had no supervision of the accounting or knowledge of the books?

A. That is right.

Q. Will you state whether the books as they are kept show a separate statement of profit and loss for each of the four states, Minnesota, Wisconsin, North and South Dakota?

A. The general ledger does not.

Q. Are the figures shown in this statement taken from the general ledger?

A. The figures shown on that statement are arrived at by prorating the figures drawn from the general ledger.

Q. Will you state how that prorating is done?

A. By taking the ratio of sales within Minnesota to the entire Company's sales and applying it to the various expense.

Q. It is true, then, is it not, when you say this statement presents a correct picture for Minnesota, it is based on an estimate only?

A. It is based on the actual figures prorated down to this [fol. 169] figure and it may not to the cent express the true condition, but approximately it would.

Q. It assumes, does it not, that the cost of merchandising per dollar is the same in each of the four states?

A. Yes.

Q. Is the National Tea Company of Delaware, a subsidiary of the National Tea Company of Illinois?

A. It is.

Q. Is one of the businesses in which the National Tea Company of Delaware is engaged, the purchase of butter and eggs?

A. It is.

Q. Is the National Tea Company of Illinois in any way interested in the profit from that branch of the Delaware Company's business?

A. From the butter and egg branch?

Q. Yes.

A. I wouldn't know that outside of the fact they are interested in them through stock ownership of the entire Corporation.

Q. Do the books of the Delaware Company show the transactions, if any, with reference to that branch of the Company's business between the Delaware and Illinois Companies?

A. The records would show it in this way,—If there would be bills from one company to the other if there were purchases from the other company.

Q. Is it true that the Delaware Company uses its trucks to carry butter and eggs purchased in these four states [fol. 170] and shipped to the National Tea of Illinois?

A. I hardly think I could answer that because I am on the accounting end entirely.

Q. Wouldn't that enter into the accounting end if it is true there was such a business, wouldn't the accounting end show a profit or loss or absence of either with reference to the Delaware Company?

A. If we sold butter and eggs to the National Tea of Chicago, the accounts would indicate that fact.

Q. But you do and have, during the period covered by this report?

A. I recall one transaction.

Q. Do you mean an individual transaction or a series of transactions?

A. I mean one individual transaction.

Q. If there were more, would you remember?

A. I think I would. I see no reason why I should forget.

Q. Referring to the statement, Exhibit E, I notice an item, 'Provision for Federal taxes.' What is included in that item?

A. That is the amount we set aside to pay Federal taxes on the earnings.

Q. Is that a statement of an amount actually paid or an estimate?

A. It is an estimate at the end of that year adjusted in the following year.

Mr. Orfield: Objection to the introduction of Exhibit E on the ground it is incompetent, irrelevant and immaterial in that it has been shown that the original books from [fol. 171] which this statement is taken, cover four states; that the present case involves Minnesota only and that in as far as this reflects the business in the four states, it is an estimate only. It is further objected to as no sufficient foundation laid because according to this witness's testimony, the books for the first five, six years were not kept under his supervision and further objected to on the ground it is not the best evidence; the original account books from which this record is taken are not in court and that in order that an accountant may testify as to a summary of the books, they must be in court. It is further objected to as hearsay,

the various items in this report are not an original document but somebody's statement with reference to those matters.

Mr. Doherty: I would like to ask a few additional questions.

By Mr. Doherty:

Q. The books of the National Tea Company from 1923 to 1928 which entered into the compilation of this summary and which you say you didn't have immediate supervision of, or they were made during a period when you did not have direct supervision of the books of the National Tea Company, are they the regular books of account of the Company covering that period?

A. Yes.

Q. And are those books of account still preserved in the office in Minneapolis?

A. Yes.

[fol. 172] Q. And are they the books on which the Company still has reference and rely as to operations back during that period?

A. Yes.

Q. And does the Company itself, for all purposes, assume those books are true and correct?

A. I believe they do.

Q. Do you know how many people there were who took part in making this summary?

A. There were two people that made up the principal volume of the work and probably three or four people entered into some of the figures in a minor way.

Q. Are those people regularly employed in the accounting department of the National Tea Company?

A. Yes.

Q. And people whose regular line of work extended to such matters as this?

A. Yes.

Q. Mr. Bosiger, can you give us some idea as to the volume of records involved in the compilation of this summary?

A. The records would fill a very large space.

Q. From 1923 to 1934?

A. Yes. There would be a number of books, papers, records of all kinds, journals from year to year from 1923 to that date. I imagine we would have to get a truck to hold them.

Q. Do you think you could hold them in one truck load?

A. That would be hard to say, I never saw them all together.

[fol. 173] Q. Can you tell us how many different units of records are involved?

A. Perhaps 12 to 15 different types of journals, reports on the stores, invoice records.

Q. Expense controls?

A. Yes, analyzed distribution of sales and all the different entries that record the various transactions of the Company in the stores and warehouse.

Q. You spoke of results of this statement tieing in with other records. What did you refer to?

A. We prepare a financial report every year, we prepare income tax reports, we prepare general statement tax reports and these figures dovetail in certain respects. Of course here we prorated the expense according to sales. The final result would not tie in with anything in particular, but the figures used in the proration would tie in with the various reports we make, financial statements to the parent company.

Q. I will show you Plaintiffs' Exhibit F and ask you what that is?

A. An earnings statement of the operations of the National Tea Company of Delaware, the entire company in all states they operate for the years 1923 to 1934 inclusive.

Q. Covering the same period as Exhibit E?

A. Yes.

Q. In the compilation of Exhibit F, is there any prorating done in this, or are these actual true figures?

A. Those are actual true figures.

[fol. 174] Q. This includes all the territory of the National Tea Company operations?

A. Yes.

Q. How many stores have you outside of Minnesota?

A. I don't recall the number.

Q. Does the result of your operations outside of Minnesota materially affect, in terms of profit or loss, the result of your Minnesota operations, whether they are all combined or whether you take your Minnesota operations separately?

Mr. Orfield: Objected to as immaterial.

Mr. Doherty: In connection with Plaintiffs' Exhibit E, which is the statement of Minnesota operations, I offer in

evidence Plaintiffs' Exhibit F, which is a similar statement of the entire operations of the National Tea Company, including Minnesota and the other four states. The only purpose of these Exhibits is to show first, total sales and second, margin of net profit for each year. I am not offering Exhibit F as it tends to remove the objection of counsel to Exhibit E.

Mr. Orfield: That is objected to. It does not truly reflect their earnings.

Mr. Doherty: Exhibit F is offered to further the foundation for the introduction of Exhibit E.

Mr. Orfield: Object to Exhibit F for the same reasons stated as to Exhibit E and further because it does not cover the State of Minnesota as such individually at all.

By Mr. Orfield:

Q. Were these exhibits E and F prepared especially for [fol. 175] this trial or are they a part of your regular accounting system?

A. No, they were prepared especially for this trial.

Q. You stated certain other persons assisted in preparing this report?

A. Yes.

Q. Are these persons now in your office?

A. Yes.

Q. And they are available here for summons as witnesses?

A. Yes.

Q. You stated further that the books from 1923 to 1928 from which these reports were made in part, are the regular books of the company?

A. Yes.

Q. What is the basis of that knowledge?

A. Those books were prior to my time and were turned over to me as records of the company and since that time have been prepared under my supervision and I know them to be records of the company.

Q. You are basing your testimony on somebody's statement to you that these books are the Company's books for the period from 1923 to 1928?

A. Yes.

Mr. Orfield: Renew the objection.

By Mr. Doherty:

Q. You know these books from 1923 to 1928 have been used by the company as their books ever since you have been there?

A. I didn't use them myself.

[fol. 176] Q. Haven't you ever had occasion to use them?

A. I have had occasion to refer to them. I know I have gone back over the records but I didn't check them back against the reports covering those prior years.

Q. The Company does not have any other records covering those prior years?

A. I know of none.

Mr. Orfield: Has there been any transaction during the period since you came in as accountant which developed from these books from 1923 to 1928? Is there any figure in those books which you have kept which depends for its amount on figures in these earlier books?

A. Yes.

(Argument by counsel.)

The Court: What is the purpose of Exhibit E?

Mr. Doherty: The only purpose is to show the gross sales in the State of Minnesota and net profits for these years, to show in a general way what the effect of this tax has on the profits of this Company and what effect it would have if it had been in effect all these years. The Company is already in the red and the effect of the tax would be to put them further in the red.

The Court: What is the purpose of going back to 1923?

Mr. Doherty: To avoid any claim that the State might make that the history of business from 1929 to the present time would not be typical because of conditions, unusual conditions, the depression, unusual business conditions; in [fol. 177] order to give a more correct picture we thought we would extend the history back to 1923 so there would not be any question, as six, seven years of it at least is what everybody considered normal times.

The Court: Is Exhibit E of itself a complete statement of the gross earnings of Minnesota along without any prorating?

Mr. Doherty: The sales are the absolute figures from the Minnesota stores. The only figures affected by any prorating is the net profit.

The Court: Then is any other evidence than the gross sales material?

Mr. Doherty: Gross profits and the net are material figures. The net is arrived at by prorating certain expenses between Minnesota and the entire territory.

The Court: And that is not reflected there?

Mr. Doherty: It is reflected, but the only question counsel makes is when you arrive at the Minnesota share of the expense by prorating them, there may be an opportunity for error.

By Mr. Doherty:

—. Will you tell us, Mr. Bosiger, for illustration take operating expense, tell us how the operating expense of the entire territory was prorated to Minnesota for the purpose of this compilation?

A. By taking Minnesota sales as compared to the entire Company's sales and getting the ratio, which ratio would be in the neighborhood of 80 to 85% plus and then applying that to the entire Company's expense and calling the result Minnesota expense.

[fol. 178] Q. As an accountant, is it your opinion that is a fair way of getting the result by this prorating?

A. In accounting you must prorate your overhead over individual operations. Proration is the method used.

Mr. Rutchick: But that is not an accurate determination of the business done by the National Tea in Minnesota?

A. The business done is actually stated as far as sales are concerned.

(Argument by counsel.)

Q. Can you give us the percentage, approximate percentage of the total sales from the Minnesota stores?

A. I think 80 to 85%.

The Court: Then 85% of the overhead would be charged to Minnesota on the books?

Mr. Doherty: That's it.

The Court: This question of allocating the expense does not affect in any way the gross sales of this organization in this State?

Mr. Doherty: No.

The Court: And that is what this tax is based on?

A. Yes.

The Court: The only other suggestion I have in mind is it might be objectionable because of the fact this witness has not checked this Exhibit to verify the correctness of certain parts of it.

Mr. Doherty: If there is any specific record, we would be glad to present it.

The Court: We will pass these exhibits at this time until the recess period.

[fol. 179] WILLIAM E. RUSSELL, sworn on behalf of plaintiffs, testified.

Examined by Mr. Doherty:

Q. Mr. Russell, where do you live?

A. Wilmette, Illinois.

Q. What is your position?

A. Comptroller for the National Tea of Illinois.

Q. How long have you been in that position?

A. 12 years.

Q. What was your business experience prior to that time?

A. Public accountant with Arthur Young & Company for nine years.

Q. You work in the Chicago office?

A. Yes.

Q. You spoke of the National Tea Company of Illinois. Is that the parent company of the National Tea?

A. The National Tea of Illinois owns a number of subsidiaries of the same name.

Q. You mean it owns the capital stock of other corporations such as the National Tea of Delaware, which we have been talking about here?

A. Yes.

Q. Tell us what other corporations other than the National Tea of Delaware, the National Tea of Illinois owns the stock of?

A. All the outstanding stock of the National Tea of Wisconsin, the Red Ball stores of Iowa, George Rasmusson Company of Illinois, Chicago Piggly Wiggly, Incorporated, Illinois, American Stores, Incorporated, Illinois, Consumers [fol. 180] Food, Incorporated of Wisconsin, Consumers

Grocery, Incorporated of Illinois, India Tea Company of Illinois, Logan Tea and Market Company of Illinois, National Food Stores of Iowa, National Food Stores of Michigan, National Food Stores of Minnesota, National Food Stores of South Dakota; National Food Stores of Indiana, Sterling Food Products, Incorporated, of Illinois.

Q. In how many states do these stock owned corporations operate?

A. I think it is nine states, eight or nine states.

Q. Can you give us the total number of stores operated by all the corporations?

A. Approximately 1225.

Q. Do all these corporations transact substantially the same character of business?

A. All with the exception of George Rasmussen Company and Sterling Food Products, Incorporated.

Q. What is the difference?

A. The George Rasmussen Company operates a retail store in a department store in Chicago. It is a retail grocery the same as the others, but slightly different type of operation. Sterling Food Products is a manufacturing company, canning vegetables.

Q. Does the National Tea Company today own all the stock of these other companies?

A. Yes.

Q. Is the National Tea Company operating to any extent? [fol. 181] A. It operates around 900 stores.

Q. Where?

A. Indiana, Illinois and Iowa.

Q. What are your duties as comptroller of the National Tea?

A. I have charge of the offices and accounts.

Q. And the accounts involve the accounts in relation to the purchase and sale of merchandise?

A. All accounting matters.

Q. What are the sources of the merchandise purchased by the National Tea Company of Illinois, whether they buy or manufacture or what?

A. They buy from manufacturers, producers and manufacture somewhat themselves.

Q. Is the Illinois Company the only one engaged in the manufacturing business?

A. No, the National Tea of Delaware and the National

Tea of Wisconsin does some manufacturing in addition to the Sterling Food Products, which is a manufacturing company.

Q. Does the National Tea of Illinois do any purchasing for the other subsidiaries?

A. Some.

Q. Does it supply to any subsidiaries the goods of its own manufacture?

A. Yes.

Q. Do you know the basis on which the National Tea of Illinois charges to the other subsidiaries the goods it sells to them. This is first the goods it purchases and sells?

A. All purchased merchandise is sold at invoice cost, plus the warehouse handling charge. The warehouse handling [fol. 182] charge is a nominal charge for the loading of the car and the shipping.

Q. Does that charge cover the actual expense of the handling?

A. Approximately, possibly not quite.

Q. Does the National Tea make any profit on that?

A. No.

Q. With respect to the basis on which it bills to subsidiaries for the goods manufactured by the Illinois Corporation, on what basis does it bill those goods?

A. At manufacturing cost.

Q. Does the National Tea of Illinois make any profit on that class of business?

A. Not on the part it sells to the branches.

Q. Does it make any sales except to its own subsidiaries?

A. Directly through its own stores.

Q. But as to the goods which it buys and sends to its own subsidiaries or their stores or which it manufactures and sends to its own subsidiaries or their stores, the National Tea would not make a profit as I understand it?

A. No.

Q. In the course of your work Mr. Russell, do you have occasion to make a study of the subject of sales and profits in relation to sales by your company and its subsidiaries?

A. I know the sales continually and the ratio of profits to the sales. I make reports on that continually. I have made no study outside of our own business.

[fol. 183] Q. You are familiar with the figures of your own company with regard to margin of sales and profits?

A. Yes.

Q. Both in respect to the Illinois Corporation and generally speaking, its subsidiaries?

A. Yes.

Q. For how many years have you given consideration of that subject?

A. It is a matter of monthly consideration, it is always an important factor.

Q. During all the time you been comptroller for the company?

A. Yes.

Q. What do you say Mr. Russell as to whether it has been your experience that there is any relation to the volume of sales of a store or a system of stores and the margin of net profit made, I mean percentage of net profit in terms of gross sales? Whether there is any relation between the volume of sales and the margin of net profit. I am refering to your experience in your own companies?

Mr. Orfield: Objected to as incompetent, irrelevant and immaterial because it applies to the various companies generally and not the National Tea in so far as it operates in Minnesota, calling for a conclusion and it is opinion evidence and there is no foundation laid.

(Question read.)

Q. Whether from your experience you are able to say in respect to the National Tea of Illinois and its subsidiaries, whether there is any such relation or not?

[fol. 184] A. Yes, I can tell you. My answer would be 'yes.'

Q. The answer is that you can tell us?

A. Yes.

Q. Then I will ask you whether or not there is any such relation?

Mr. Orfield: Same objection, incompetent, irrelevant and immaterial, no sufficient foundation laid, calling for opinion of the witness and that it calls for information with reference to the trade generally and not the matter in issue before this Court, the profits and losses in Minnesota.

The court: He may answer.

Exception by defendant.

A. I would say there is no relation between the two.

Q. Why?

A. Because there are so many other factors that enter into the percentage of net profit other than the volume.

Q. What are the other factors?

A. Rent, distance from the warehouse, cost of transportation, the investment in a bad location, any number of expense factors that would prevent a uniform percentage.

Q. Has the question of efficiency of the management anything to do with it?

A. The efficiency of the local management has a great deal to do with it.

Q. And the question of the proportion of high or low priced goods sold?

A. Distribution of sales is very important. Whether a [fol. 185] store sells a large percentage of items carrying a high margin of profit as compared with its total sales or whether it sells a larger percentage of items carrying a less margin of profit.

Q. Are there typical differences in gross margins as to one commodity as compared to the other sold in the grocery business?

A. There are as far as our business is concerned. There is considerable difference in the margin of profit between butter and canned goods.

Q. Which has the larger margin of profit?

A. Canned goods.

Q. How about sugar?

A. Low gross.

Q. What would you compare with that in the higher group?

A. Coffee.

Q. So I understand the relation between gross sales and profits is affected by the predominating in a particular store or group of stores on the stocks, whether they would be high or low margin goods?

A. Yes.

Q. And that depends on what?

A. In many cases on the community and in some cases on the manager. In certain areas which carry a reasonable margin of profit, sales will be low because of home grown competition. In the cities that would very seldom be true.

Q. What is your experience, whether it would hold generally true, that the largest stores in your system produce the largest margin of profit?

[fol. 186] A. In our case it does not.

Q. Would you say the contrary is true or neither is true?

A. In our particular experience, our largest volume store does not show the largest volume of profit, but I cannot say that is generally true. We have large volume stores which show a large profit and small volume stores showing a large profit.

Q. State whether generally as you go down your list of stores, comparing your large and smaller volume stores, whether any relation can be seen between the two?

A. I don't think so.

Q. You are comptroller of the National Tea of Illinois or of the corporation?

A. My official position is comptroller of the National Tea of Illinois, but I have charge of the system and method of auditing of the branches as well.

Q. Do you have occasion to analyze the sales and profit figures of all the corporation whose stores are owned by the National Tea of Illinois?

A. We receive reports from them each month.

Q. What would you say whether the margin of profit made by a store or a group of stores remains constant from year to year or whether it varies from year to year?

A. They vary from year to year.

Q. Is that a wide or a narrow variance, or is there any rule about it?

A. There does not seem to be a definite rule. Sometimes there is wide variance and sometimes not.

[fol. 187] Q. Would the same thing be true of any group of stores which you would combine together?

A. Yes.

Mr. Doherty: You may examine.

Cross-examination.

By Mr. Orfield:

Q. Mr. Russell, you mentioned the fact that one subsidiary of the National Tea of Illinois may sell to the parent company or its subsidiaries?

A. Yes.

Q. When such a sale is made, what is the basis of accounting between the National Tea of Delaware and the subsidiary?

A. The basis of accounting would be, as the merchandise

was shipped to the National Tea of Delaware by the Illinois Company, the Illinois Company would bill the Delaware Company and on its records set up a shipment to branches and a charge to that account as accounts receivable and on the Delaware books it would be set up as merchandise received and payable by the Delaware Company. The basis of that billing would be cost plus warehouse handling charge.

Q. How would that cost be figured? For instance, on a purchase of butter from the National Tea of Delaware, by the National Tea of Illinois what would determine the cost?

A. The price that the National Tea of Delaware paid.

Q. How would the cost of transportation be figured?

[fol. 188] A. If it were prepaid it would be charged on the invoice and if not prepaid, it would be paid at the receiving end.

Q. Take a case like this. The National Tea of Delaware truck delivers goods throughout Minnesota and takes back a return load of butter and eggs to the National Tea of Illinois. How would the cost of gathering up and transporting that butter and eggs to Chicago be figured?

A. If that type of condition ever did exist, if the National Tea did pick up butter and eggs in the surrounding territory, they would take it into their own warehouse at its cost. If it was sold to the National Tea of Illinois, it would probably be a carload lot and there would not be any trucking.

Q. Wouldn't this be true? One subsidiary might purchase more butter and eggs than it could sell to the market and might sell them to another subsidiary?

A. I don't know of any such instances. There may be an isolated case, but it certainly is not the general practice. Each subsidiary is buying its own merchandise in its own territory. In fact all butter for the National Tea of Illinois is purchased in Wisconsin.

Q. Your various subsidiaries do a great deal of advertising. What is your customary practice in such advertising where you have a great many stores in one city? Is that advertising individual as to each store or do the various stores advertise together?

A. If the advertising medium is general, it would be [fol. 189] centrally placed and would cover all the stores represented by that medium.

Q. If for instance, the National Tea of Delaware would have an ad in the Minneapolis Journal, it would advertise goods of all the Minneapolis stores of the National Tea?

A. Yes.

Q. Why is the advertising carried in that fashion and not individually?

A. It would not be practical to have each one of the 25 or 30 stores place their own ad in the newspapers. It would require an advertising expert in every store to do it.

Q. In warehousing the goods of the National Tea Company for Minneapolis, would there be one joint warehouse for each store or one warehouse for all the stores?

A. There would be one warehouse.

Q. Would that be because that system of joint warehousing is more economical?

A. That would be my opinion.

Q. In delivering the goods from the central warehouse to the various stores of Minneapolis, would one truck serve all the stores or would it serve an individual store?

A. One truck would not serve all the stores, but it would serve more than one store.

Q. Would that be because that system of delivery is more economical?

A. Presumably.

Q. Would that give the National Tea an advantage over individual stores in the matter of the cost of advertising, warehousing and delivering?

[fol. 190] A. I could not say off-hand. I should think as far as the delivering is concerned, the wholesaler or whoever was delivering to a number would probably deliver as economically as possible. It would cost about the same amount per ton I think.

Q. Would it not be a fact a single store under the necessity of maintaining at least one truck, would have a larger overhead for the maintenance of that truck and making of deliveries, than a chain store like the National Tea would have?

A. I don't think an independent store would maintain a large truck.

Q. You mentioned the fact that you supervised the accounting system, not only of the National Tea, but of various subsidiaries. Is that correct?

A. I supervise it generally in so far as methods of system and auditing is concerned.

Q. Will you state again what is the number of stores included in these various subsidiaries?

A. Approximately 1225.

Q. Then would it be true that the system of accounting developed by you, is used to advantage in over 1200 stores?

A. I don't get that.

Q. It is true, is it not, that an excellent system of accounting is an important item in the economy of operation?

A. I think it is a very important part.

Q. And you have indicated that the system developed by you is used in over 1200 stores?

A. That is true.

Q. Would it then be further true that as far as the devel- [fol. 191] opment, the cost of development of a good system of accounting is concerned, the National Tea, by reason of the great number of its stores, has an economical manner of handling the accounting of its various subsidiaries?

A. I think that would be a matter of opinion.

Q. Comparing it with the individual store?

A. The individual store would not need the same system of accounting. The individual owner is there and does not have to depend on accounting records for his information.

Q. It is apparent that when 1200 stores can share the work you have done in developing a system of accounting, the cost to each store of developing that system must be very low as compared with a smaller unit.

A. That would be true if they were to have the same system which of course they would not have.

Q. Would not a small chain have substantially the same system?

A. I don't believe so. No, certainly a two to five store chain would not. No accounting control would be necessary in that case.

Recess fifteen minutes.

Q. Mr. Russell, you stated that your various subsidiaries have over 1200 stores. Is the buying for these various subsidiaries then to a considerable extent done by the National Tea of Illinois?

A. They would buy for all the stores they operate and might make some purchases for the other stores too.

Q. Then that would mean you buy goods in very large quantities?

[fol. 192] A. Carload lots.

Q. Do you sometimes buy the entire product of a factory?

A. I don't think there are any instances where we buy the entire product except sometimes in Wisconsin in the co-operative creameries.

Q. Are you able to get better prices by taking the entire product.

A. With one or two exceptions, we pay a premium of one-fourth to one-half cent a pound in order to get that product.

Q. Isn't that because these creameries use a different brand of butter?

A. The butter must represent a certain score, but I am not familiar enough with butter to know what that is.

Q. In paying for these purchases, do you pay cash or get credit terms?

A. All butter received prior to four-o'clock today, is paid for today.

Q. No doubt in many cases, you can get a discount for paying cash?

A. Not with reference to butter, but generally, yes.

Q. Would you know what would be the average percent of saving in taking that cash discount?

A. The cash discounts vary, but for our own purpose we consider the cash discount would average approximately 1½%.

Q. It is true, then is it not, that by reason of the financial strength of your company, you are able to effect a considerable saving in paying cash, which a weaker concern would not be able to do?

[fol. 193] A. If he had not sufficient cash to discount his bills, he would lose his discount I presume.

Q. Do you remember what is the average turnover of these 1200 stores to which you have referred?

A. That would not only include stores, but warehouse stock,—between nine and ten tons a year.

Q. Would you know how your speed of turnover compares with the speed of turnover of the average independent grocer?

A. I would not know.

Q. Would you know whether it is faster or slower?

A. I am not familiar with any independent's figures.

Q. In your purchasing, do you find you can effect a saving by purchasing in large quantities?

A. I think generally there is a saving on some articles by large quantity purchases.

Q. In displaying your goods, do the various stores follow approximately the same form of display? Is there a standard method of displaying goods in stores of the same character?

A. There is a general standard within a territory, but of course, the physical conditions of the store, prevent an absolute standard.

Q. What is the advantage of such standard display?

A. I really could not say.

Q. But there is an advantage?

A. I presume there is, I know we do it.

[fol. 194] Q. Do you maintain schools for the training of your help?

A. No sir.

Q. Can you state what is the average profit on capital invested in these 1200 stores, we will say over a period of ten years?

A. No, I could not.

Q. Has there been a profit made by these 1200 stores during these last ten years?

A. There has been a profit made by the consolidated group.

Q. Every year?

A. By the consolidated group, yes.

Q. Are you subject to a chain store tax with reference to the greater portion of these 1200 stores?

A. No, we are not.

Q. You have stated there is a saving effected by buying in large quantities. Does that saving on an average become larger per dollar as your amount of purchasing increases?

A. I don't think so. In most cases we buy in carload lots and get carload prices. Whether we buy one or ten the price would be the same.

Q. Well then in some cases, isn't a saving effected in buying in larger volumes than carload lots?

A. Yes, there are some instances we would get an additional discount because of the large purchase.

Q. Is it the policy of your company to add stores to its various chains if favorable locations are found?

[fol. 195] A. Well, generally that is done, yes.

Q. Would that be on the basis of fact that as you expand the number of stores in your chain, your total net profit increases?

A. That would not be necessarily with the idea of expanding the number. There might be one store added and another store closed.

Q. Over the last ten years, has there been an increase in the number of stores in these various subsidiaries?

A. Most of these subsidiaries we have not owned for ten years. We were organized in 1927, 1928.

Mr. Orfield: That is all.

Re-direct examination.

By Mr. Doherty:

Q. The question of purchases by the Illinois Corporation from the Delaware Corporation,—is there any considerable amount of business done that way?

A. The only thing I know the Illinois Corporation buys from the Delaware Corporation is a toast that the Delaware Corporation makes, called melba toast.

Q. Aside from that is there a practice of the Illinois corporation buying anything from the Delaware Corporation?

A. No.

Q. Do you personally have any recollection of any transaction of that kind?

A. That is the only thing I know we have ever bought.

[fol. 196] Q. As to the proportion of goods sold by the Illinois Corporation to the Delaware Corporation, can you give us any idea what proportion of the Delaware Corporation purchases, for the operation of its business it makes through or from the Illinois Corporation.

A. I would have to guess at that. I have the figures available but I haven't them here. It is a large amount, but I could not state the percentage.

Q. Can you fix a maximum?

A. I would say it was considerable less than 25%.

Q. You say your cash discounts average 1½%. Is that more than anybody else would get for paying cash?

A. Those are the usual terms.

Q. That is not special to the National Tea?

A. No.

Q. You say generally speaking, you get the same price if you buy one or ten carloads, but there are some additional

discounts for larger purchases. Will you give us an idea what that amounts to?

A. That amounted to 31 hundredths of one percent of the sales of the National Tea of Illinois.

Q. Do any of the other companies buy except for their own use? Does the National Tea of Delaware make a practice of buying for any of the other subsidiaries of the National Tea of Illinois?

A. No.

Q. In respect to the profits of the consolidated group, you [fol. 197] testified that would show some profit over the last ten years. Do you mean each year?

A. Yes.

Q. Would that profit vary widely from year to year or is it substantially uniform?

A. It varied very widely.

Q. Both the amount and percentage of profit to gross sales?

A. Yes.

Q. With respect to the method of accounting used by the National Tea company, counsel was questioning you with respect to the advantage of that as compared with the system of accounting used by smaller chains. Would there be any advantage do you think in a small chain using the system of accounting of the National Tea?

A. I think it would be a disadvantage for them to use it, they would not need it.

Q. Is there anything to prevent a small chain using such a system if they found it to be of advantage that you know of?

A. No reason why they could not or should not.

Q. Do you know whether the system of accounting used by the National Tea is more or less expensive, distributed among the units involved than the system used by a small chain with respect to the units in the small chain?

A. That I would not know.

Mr. Doherty: That is all.

J. J. Bosiger, recalled.

Examined by Mr. Doherty:

Q. One more question on the offer of Exhibit E. Did [fol. 198] the National Tea throughout this period from

1923 to 1934 operate stores in states other than Minnesota?

A. Not through the entire period.

Q. Up to what time were the operations of the National Tea confined to Minnesota alone?

A. Up to 1927.

Q. And you started to work for them in 1928?

A. Yes.

Q. So from 1923 to 1927 there was no question of prorating expense in arriving at this statement?

A. No.

Mr. Doherty: Renew offer of Plaintiff's Exhibit E, together with Exhibit F, if counsel desires Exhibit F as a means of checking against Exhibit E.

Mr. Orfield: State renews its objection.

The Court: Have you checked up whether there are any particular books you would like to have?

Mr. Orfield: That would be difficult, because we don't know the exact nature of their accounting system.

The Court: Do you lay any stress on the fact that the witness is not competent to testify to figures involved prior to 1928?

Mr. Rutchick: We think he is not competent to testify.

Q. How long did the preparation of this statement take?

A. It was done at various times. The first report we made up took two days of intensive effort on the part of [fol. 199] two people and with the assistance of five or six others, doing a very small part, prorating and adding, so parts were verified by various people and parts verified by myself. I could verify the entire report probably in a week I would say.

Q. So you could testify as to first-hand information on all the books and records in making this up?

A. Yes, that is my guess.

(Argument by counsel.)

The Court: He has qualified himself from 1928 to 1934. I will admit it at this time subject to the objection of counsel with the privilege of defendant, desiring any particular information which does not involve a truck load of books, they may have that right.

Mr. Doherty: We will be glad to bring any records that it is practical to bring into court at any time during the trial of this case.

The Court: It will be received on that theory.

Exception by defendant.

Q. I will show you Plaintiff's Exhibit G and ask you what that is?

A. This is a statement showing what the chain store tax would have amounted to in the years 1923 to 1933, inclusive, using the rate in effect at the present time and figuring an estimated amount of $75,000 for sales of the one store which would be exempt under the law.

Q. The first column gives the number of stores in operation in July, 1923?

A. Yes.

[fol. 200] Q. And the subsequent columns are of July of each year given?

A. Yes.

Q. In arriving at the specific tax is merely applying the rate to the sales in the number of stores?

A. Yes.

Q. You have here gross sales tax. How did you arrive at that?

A. By applying the rates according to the law, to the sales in the stores during those years.

Q. Where do you get the sales figures?

A. From the records.

Q. The same records you used on Exhibit E?

A. Yes.

Q. That involved no prorating?

A. No, that is Minnesota sales.

Q. Then your total tax and percent to sales is merely a matter of mathematical computation?

A. Adding it together.

Q. So this is merely a mathematical computation for the number of stores each year?

A. Yes.

Mr. Doherty: Offer in evidence Plaintiffs' Exhibit G.

Mr. Orfield: Object to Exhibit G on the basis that it is incompetent, irrelevant and immaterial and particularly immaterial in that it assumes to figure what would have been a loss or a reduction in profit from a tax over a period of years when that tax was not in effect, which assumes plaintiff would have conducted its business, put the same price [fol. 201] on its wares if it had that same over-head, which

obviously it would not. Further objected to as no foundation laid and not the best evidence, also hearsay.

The Court: Objection sustained.

Q. I will show you Plaintiffs' Exhibit H. Please state what that is?

A. That is a statement showing the percent of gross sales tax to sales and percent specific tax to sales during the years 1933 and 1934.

Q. And this is the tax actually paid?

A. Yes, it is the tax actually paid.

Mr. Doherty: Offer in evidence Plaintiffs' Exhibit H.

The Court: Received without objection.

Q. Is the amount of tax paid, as shown on this statement in the year 1933, the amount paid in that year or for that year?

A. We didn't pay any of the tax in 1933. It was paid in 1934 but applies to 1933.

Q. So this Exhibit shows the tax for the year whether it was paid in that year or the subsequent year.

A. That is the total tax paid for the year 1933 and the total tax paid for the year 1934, paid in 1934 and 1935.

Q. So it is the tax for the two years, rather than paid in the two years?

A. Yes, that is right.

Q. Did you pay a specific tax for 1934 on or about January 20, 1934?

A. We did.

[fol. 202] Q. Do you know how many stores you had in operation at that time?

A. In 1934 we paid a specific tax on 141 stores.

Q. Did you have that many in operation at the time you made your return?

A. Yes.

Q. Then on July 1st of the same year, how many stores did you actually have in operation?

A. 125 stores.

Q. Making a difference of how many stores?

A. 16.

Q. You had 16 less on July 1st than when you made your return?

A. Yes.

Q. What does that make?

A. $2480, based on $155 a store for 16 stores.

Q. You were paying the maximum rate, so you paid an excess of specific tax in that amount for the year 1934?

A. Yes.

Q. Has that amount ever been paid back to you by the State of Minnesota?

A. No.

Q. Have you called the State's attention to the fact it was an excess payment?

A. Yes.

Mr. Doherty: I think that is all.

Adjourn until 10 A. M. Thursday.

WILLIAM A. PFISTER, sworn on behalf of plaintiffs, testified.

Examined by Mr. Doherty:

Q. Where do you live?

[fol. 203] A. No. 3515 Third Avenue South, Minneapolis.

Q. How long have you lived in Minneapolis?

A. Since the first of November, 1935.

Q. What is your occupation?

A. District supervisor for the National Tea Company.

Q. What in general are the duties of a district supervisor?

A. Well, we supervise a block of stores that is allotted to us in a certain territory, have direct supervision of the personnel in the stores, as well as the merchandising end of it.

Q. General business problems?

A. Yes.

Q. How long have you been in your present condition?

A. Six years.

Q. And what is your territory?

A. North and west of Minneapolis.

Q. Is your territory determined by particular cities or how?

A. A certain block that is the easiest for me to get to, because I travel all the time.

Q. How long have you been supervisor of this particular territory?

A. Since a year ago January first.

Q. Prior to that time did you have different territory?

A. Yes.

Q. Was it partly or entirely different?

A. Just partly. I have a few stores I have had for the past six years.

[fol. 204] Q. In connection with your duties as supervisor, have you become familiar in detail with the competitive situation of the National Tea in your district with respect to the particular stores?

A. Yes.

Q. How many stores have you under your jurisdiction?

A. 20.

Q. We want to cover enough of your stores to cover fair typical examples of the situation throughout the territory. I will ask you if the City of Fairmount is in your territory?

A. Yes.

Q. Have you a store there?

A. Yes.

Q. Is that a grocery or combination store?

A. It is a combination store.

Q. What is the situation generally throughout your territory as to whether you have competition in all your various locations?

A. Yes, we have.

Q. What kind of competition generally in respect to the character of organization conducting competing stores?

A. In almost every town I have every kind of competition excepting one.

Q. What kind do you mean?

A. Chain competition.

Q. You mean ownership chains, such as the National Tea?

A. Yes, and volunteer chains, independent small chains that have from two to seven and ten stores and independents.

[fol. 205] Q. You mean individual stores operated by one person or a corporation?

A. Yes.

Q. So we won't become confused, in speaking of chains, this Tax Law of the State of Minnesota defines a chain as any person or corporation operating two or more stores, so in your answers I wish you would use chains in that sense and distinguish between small and large chains. Take the City — Fairmount. You said you had a store there?

A. Yes.

Q. What competitive stores are there at Fairmount?

A. Right directly to the right of us, next door, we have an independent by the name of Bert Wallace.

Q. That is an individually owned store?

A. Yes, right across the street, cater-corner across from us we have Biers and Bylow. That is a combination store also.

Q. What is that, a chain or independent?

A. He has two stores.

Q. Both in Fairmount?

A. No, one in Fairmount and one in Windom, Minnesota.

Q. Do you know whether he had more than two stores in 1934?

A. I think he opened this store in October, 1934.

Q. What other competitors do you have in Fairmount?

[fol. 206] A. On the same side of the street a block down from our store is an Atlantic and Pacific Tea Company.

Q. That is the Great Atlantic and Pacific Tea Company?

A. Yes.

Q. What kind of an organization is that?

A. A chain.

Q. Operating country wide in its scope?

A. Yes.

Q. That is what you would call a national chain as distinguished from a local chain?

A. Yes, and across from the Atlantic & Pacific are the Red Owl stores.

Q. Is that a chain?

A. Yes.

Q. Where does that operate?

A. In five states, Minnesota, North and South Dakota, Wisconsin and Iowa.

Q. Where is its headquarters?

A. Minneapolis.

Q. Any other stores?

A. The Great Atlantic and Red Owl stores are combination stores with meat markets and right beside the Red Owl, we have Joe Makel from Mankato.

Q. Does he have one or more than one store?

A. He has three, one in Fairmount and two in Mankato.

Q. Anybody else?

A. Then we have Wolff and Haybien Company. They have a general store and have a large grocery department to one side.

[fol. 207] Q. Is that a chain or what? How many stores does that concern operate?

A. I cannot say for sure, because some of their other stores are called Wolff & Company and some go by the name

of Wolff and Haybien. I know Wolff and Haybien have a stock at Blue Earth, but I couldn't say how many more, because they go under different names.

Q. Who else?

A. Hirmes Bros.

Q. How many stores do they operate?

A. I think they have three stores.

Q. One in Fairmount?

A. Yes; and others elsewhere.

Q. Any other competition in Fairmount?

A. There are other stores there, but that is our main competition.

Q. Do you have any volunteer chains there?

A. We have an I. G. A.

Q. What is that?

A. Independent Grocers' Alliance. They have just a straight grocery store, fresh fruits and vegetables.

Q. Any other volunteer chain there?

A. I don't think so.

Q. Is there a Fairway store there?

A. No.

Q. Have you made observation of all of these other stores from time to time, these competitive stores in relation to their size and the size of space occupied by the store, size of store and volume of business they are apparently doing?

[fol. 208] A. Yes.

Q. Do you think it is possible for you from the observation of a store other than your own, in respect to its day by day operation, to estimate with a fair degree of accuracy, the volume of business that store does?

A. Yes.

Q. On what factors and elements in your observation do you base your judgment in that respect?

A. When a supervisor goes into a town from week to week and keeps watching his competitor, he sees how many clerks he has, how many fruits and vegetables, how fresh they are and can readily tell by walking in a store whether the store is alive and whether it does business.

Q. Does the size and condition of the store have anything to do with it?

A. Yes.

Q. Is that one of the things you have observed?

A. Yes.

Q. How about the number of customers that may be trading in the store from time to time? Is that a factor of any consequence?

A. Yes, it is.

Q. Are there any other factors you usually take into account?

A. Well, a grocery man can go in a town and by the looks of his competitor's window when you drive in, can tell whether that merchant is alive and whether he is doing business.

Q. How can you tell that?

[fol. 209] A. They have nice fruits and vegetables, signs on the windows, things setting outside where the public can see the price.

Q. Does the quantity of the perishables kept in stock indicate anything?

A. Yes.

Q. Have you made such observation with all these stores in Fairmount which you testified to as competing with the National Tea Company there?

A. Yes.

Q. Can you tell us how these various stores compare with the National Tea with respect to size of store, volume of stock kept in store and volume of business done?

A. Yes.

Q. Will you tell us in respect to these stores how they compare with the National Tea stores in relation to those items?

Mr. Orfield: What are you trying to prove by these questions?

Mr. Doherty: We are trying to prove that the National Tea is competing with various stores who pay no tax and with stores that pay taxes at rates lower than the National Tea.

A. Mr. Wallace right next door to us has a store about the same width as ours, but quite a bit longer. That store does a very large volume of business, of course does it on credit and delivery.

Q. Would you judge its volume was larger or smaller than the National Tea?

A. I would judge it was three times as large.

Q. Is that the largest store there?

[fol. 210] A. It does the largest volume of business.

Q. Which store would come next, in volume of business?
A. Biers and Bylow.
Q. Is that larger than the National Tea?
A. The store is about the same size in length and also is a combination store, but does a large business and tries to keep on a cash basis. He has some accounts.
Q. Is this store a combination store?
A. Yes, sir.
Q. And Biers and Bylow is larger in volume of business?
A. Yes.
Q. But about the same for physical size?
A. Yes.
Q. Which store would be the next largest in volume of business?
A. Atlantic and Pacific.
Q. Is that larger than the National Tea in your judgment?
A. Yes.
Q. How about the physical size of the store?
A. Longer but about the same width.
Q. And the stock?
A. About the same as the National Tea.
Q. What is the next largest store?
A. The next largest store in volume is Joe Makel's store.
Q. Have they a larger volume than the National Tea?
A. Yes.
[fol. 211] Q. How about the physical size?
A. A little smaller, it is just a straight grocery store.
Q. You mean its grocery business would exceed your combination business or just the grocery business?
A. I think it would exceed the combination business.
Q. What is the next store?
A. Red Owl.
Q. Is it larger in volume?
A. No.
Q. Would you say it was about the same or smaller?
A. About the same or a little smaller.
Q. And are the rest of the stores of smaller volume than yours?
A. I think they would be, yes.
Q. How about the size of the remaining stores you have not testified to?
A. They are about the same size as the National Tea.
Q. How about the I. G. A.?
A. About the same size store we have.

Q. And the volume of business?

A. I would say smaller.

Q. Do all these stores carry the same general line of goods as you do, the groceries the same as your groceries?

A. About the same.

Q. And those who carry fresh meat. Do they carry the same grade of meat stock you do?

[fol. 212] A. Yes.

Q. And are they all in direct and immediate competition with your store?

A. Yes, all the stores I mentioned are within two blocks.

Q. In a town of that kind, is it not true that every store competes with every other store in the same line?

A. Yes.

Q. Whether or not it is in the same block or another block?

A. Yes.

Q. Take Willmar. What stores have you there in competition with your store?

A. Across the alley in the same block we have C. Thomas.

Q. What are the Thomas stores?

A. They are small individually owned chain.

Q. In what territory do they operate?

A. I think they are only in Minnesota so far.

Q. Where are their headquarters?

A. Minneapolis.

Q. Do you know how many stores they operate in the state?

A. Twenty some I have heard, but I am not sure.

Q. What is the next?

A. Great Atlantic and Pacific.

Q. If you will take these stores in the order of their volume of business, so we won't have to go back over the same ground again. Take the largest first and mention where your stores come in in the list?

[fol. 213] A. Great Atlantic and Pacific, Red Owl Stores, Farmers Co-operative Mercantile.

Q. Is that a one-store concern or more than one?

A. Just one store.

Q. All right.

A. Ackerman Bros. Meat Market. They have a complete line of groceries, fresh fruits and vegetables.

Q. How many stores?

A. Only one. Next you have C. Thomas and then the National Tea.

Q. Is that where you come in in volume of business?

A. Yes, then Anderson's Meat Market and Nyquist's.

Q. Any volunteer co-operatives there?

A. I left one out, the I. G. A. should have been ahead of Anderson's Meat Market in volume.

Q. Is there a Red and White store there?

A. Not that I know of.

Q. Have you mentioned all of them?

A. All of any consequence.

Q. Do they all handle the same general line of goods as handled by the National Tea?

A. Yes.

Q. And are they all in direct competition with the National Tea at Willmar?

A. Yes.

Q. Now take Crookston and give us the list in order of volume of business.

A. George Peters and Son. They have two stores in [fol. 214] Crookston and the downtown store is a combination store.

Q. Do they have stores elsewhere?

A. Not that I know of. Next is the Independent Grocery and Market. They have two stores in Crookston. I don't know whether they are elsewhere or not. Then Slocum and Francis. They have only one store, then L. B. Harts Grocery.

Q. How many stores have they?

A. I am not sure. I think they have nine or ten stores now. Next is the National Tea Company and next the Red Owl stores.

Q. Any volunteer chains there?

A. Red and White, straight grocery, fresh fruit and vegetables.

Q. Any I. G. A.?

A. I would not say for sure.

Q. Are all of these stores in direct competition with the National Tea in the same general line of goods?

A. Yes.

Q. I have been using the term 'volunteer chain'. What is your understanding of volunteer chain?

A. Volunteer chain is a group of merchants who get together and have their own wholesale house, who do col-

lective buying for them and they buy almost every thing from that wholesale house, as I understand it.

Q. It is a volunteer association of independent or singly owned stores?

A. Yes.

Q. Take Staples, Mr. Pfister.

[fol. 215] A. National Tea Company, Eagle Provision Company. They have only one store. A. F. Florrie Bros., they have two stores in Staples. Red Owl Stores, Reed and Carlson and G. Palmer has a- I. G. A. store there.

Q. Take Hutchinson.

A. Great Atlantic and Pacific Tea Company, Red Owl store, I. G. A. store, Fairway store.

Q. What is that Fairway store?

A. It is a volunteer chain, but I think Fairway is only a trade name. Next is the Red Owl, National Tea, Red and White and Rightway.

Q. What is the Rightway?

A. It is a volunteer chain.

Q. Does that cover Hutchinson?

A. Yes.

Q. Then we will take Redwood Falls.

A. Red Owl store, R. R. Roberts. He runs a- R. C. U.

Q. What does R. C. U. stand for?

A. I don't know what it stands for, but it is a volunteer chain. Next is the Red and White and the Fairway.

Q. Have you a store there?

A. Yes, it belongs ahead of the Fairway store.

Q. All of these stores which you have enumerated since I last asked the question are in direct competition with you at the various points and in the same general line of business?

A. Yes.

Q. Would there be any relationship between the size as measured by volume of sales and the size as measured by [fol. 216] the stock kept on hand at any time?

A. I would not say as to that.

Q. The size of the stock is not any reliable index to the volume of business?

A. Some get stock twice a week and some only once, so they don't have to carry so much.

Q. I take it there would be no comparison between the size of the sales and the dimension of the store?

A. No.

Mr. Doherty: That is all.

Cross-examination.

By Mr. Orfield:

Q. With reference to Redwood Falls, you testified that the Red Owl was the largest?

A. Yes, the largest in volume.

Q. Is that a chain store?

A. Yes.

Q. You testified that the Red and White stores were third. Is that a chain?

A. I would call it a volunteer chain.

Q. And you testified the National Tea is fourth. That means that of the four leading stores in sales at Redwood Falls, two are chains as defined in our statute and two are volunteer chains and all of these stores are ahead of any independent grocer in sales?

A. I think so.

Q. You testified with reference to Willmar, that the Great Atlantic and Pacific was first in sales, Red Owl second, [fol. 217] Farmers Cooperative Mercantile third, Ackerman Bros. fourth, C. Thomas fifth and National Tea sixth. It is true, is it not, of these six, the following four are chain stores: C. Thomas, Great Atlantic and Pacific, Red Owl and National Tea. In other words, the leading stores in Willmar, in point of sales, four out of the six are chain stores. Is that correct?

A. I would say so.

Q. And the two leading stores in Willmar in point of view of sales, are chain stores?

A. Yes.

Q. In connection with Crookston, you mentioned Slocum and Francis. Is that a chain?

A. I don't know for sure.

Q. There used to be a wholesale house by the name of Slocum and Bergland. Do you know whether that store is connected with that wholesale house?

A. I do not.

Q. You stated George Peters and Son is the leading store in point of sales in Crookston and they have two stores.

They are then a chain store, are they not?

A. Yes.

Q. You stated Harts Grocery is the fourth in point of sales and they have some nine to ten stores?

A. Yes, I wouldn't say for sure, but I think they have that many.

Q. You stated the National Tea is fifth and Red Owl, sixth. That means with refreence to Crookston, that of [fol. 218] the six leading stores in sales, four are chain stores, does it not?

A. Yes.

Q. And that the leading store in point of view of sales is a chain store?

A. I suppose you would sall it that.

Q. You stated, Mr. Pfister, with reference to the stores at Fairmount, that the Great Atlantic and Pacific store was second in point of volume, Joe Makel's store was third, National Tea fourth and Red Owl fifth. It is true, is it not, that three of these five leading stores are chain stores?

A. Yes.

Q. Is Joe Makel a chain or not?

A. He has three stores.

Q. That means then that four of the leading stores at Fairmount are chain stores?

A. Well, I imagine so, sure.

Q. You spoke about the remaining stores at Fairmount as being all smaller than the National Tea store. Are these remaining stores mostly independents or other chain stores?

A. I think some of them are volunteer chains.

Q. And some of them are independents?

A. Yes.

Q. In connection with your work as District Manager, are you familiar with the volume of business done by the various stores you supervise?

A. Yes.

Q. Would you know the volume of the largest one for the year 1935?

A. What the total business would be for the year?

[fol. 219] Q. Yes.

A. No.

Q. I mean approximate figures. Will you state approximately the total volume of the largest store?

A. The largest store I have in my territory?

Q. Yes.

A. $60,000 per annum.

Q. And will you state approximately the volume of the smallest store in your territory?

A. $18,000.

Q. Will you state the approximate relation between the profit of the largest store and the smallest store, in dollars and cents? How does it compare? Would the profit on the store doing $60,000 be greater than that store doing $18,000?

A. Not always.

Q. Generally speaking, take it over a period of years.

A. Anybody would think so, but it is not always the case.

Q. But over a period of years, the profit of the largest store would be greater?

A. Some stores, but not all of them.

Q. But as a general rule it would be greater?

A. I would not say that.

Q. Your aim is large volume of business?

A. Yes.

Q. You use every effort to get as large a volume as possible?

A. Yes, sir.

Q. What is your purpose in trying to get a large volume?

[fol. 220] A. Lots of reasons.

Q. What is your main reason?

A. Well, in towns where you pay a high rent or high overhead, you have to do a volume of business.

Q. Then it amounts to this, doesn't it,—that you are at least trying for larger profits by getting a larger volume. Isn't that true?

A. Sure we are trying.

Q. How long have you been in your present position?

A. Six years.

Q. Looking back over that period of six years, would you know which of the stores you supervised has made the best showing for the Company?

A. I don't think I would.

Q. You mentioned the fact that many of the stores with which you compete, give credit and deliver their goods and that you do not. Seeing these stores give this additional accommodation, how do you account for the fact you are able to hold the trade and compete with them?

A. Oh, we have better locations sometimes and because of merchandise displayed.

Q. Do you generally have the best location, the better locations in the city?

A. Not always.

Q. As a general rule, do the chain stores in the cities with which you are familiar, have the better locations or the independent stores?

A. I think about a fifty-fifty break.

Q. About even?

[fol. 221] A. Yes.

Q. But you did state you are able to compete because of better locations?

A. Sometimes.

Q. Are there other reasons why you can compete in sales with these stores who give credit and delivery service?

A. None other than possibly keeping a better looking store.

Q. How do your prices compare with the prices asked by your independent competitor?

A. Sometimes higher, sometimes about even.

Q. Would you say generally a little higher?

A. No, I would call it about even.

Q. Do you do an entirely cash business?

Mr. Doherty: Objected to as improper cross-examination, going beyond the field of the direct examination.

The Court: I am inclined to think I will be liberal on this examination.

Q. Do you give credit?

A. No, we don't.

Q. You give absolutely no credit?

A. We have isolated cases.

Q. Is that credit given at the risk of the chain store or at the risk of the salesman?

A. We have the O. K. of our office manager.

Q. Will you give me an estimate of the total per cent of your business which is credit business?

A. I could not do that, I wouldn't know.

Q. Would it be as much as five per cent?

A. I would not have any way of knowing.

[fol. 222] Q. You have nothing to do then with the credit end of the business?

A. No.

Q. Would you have any information whether any considerable losses are suffered by reason of the credit business you do?

A. I don't come in contact with the accounting at all.

Q. Are you familiar with the method by which goods are purchased for the chain stores you supervise?

A. No.

Mr. Doherty: Objected to as improper cross-examination.

The Court: He answered 'no.'

Q. Do you know whether in making purchases for the stores you supervise, whether these purchases are made for cash?

Mr. Doherty: Objected to as improper cross-examination.

The Court: I am inclined to think this is proper cross-examination. It may lead up to his knowledge of his testimony and what he bases his opinions on. He may answer.

Exception by plaintiffs.

(Question read.)

A. I have no idea.

Q. Are you familiar with the method by which the goods purchased by the stores you supervise are distributed from warehouses?

A. Yes.

Q. Are they distributed from a central warehouse by [fol. 223] trucks which serve many stores in the same trip?

A. Yes.

Q. Is the reason for that because it is more economical to deliver the goods in that way?

A. I imagine so.

Q. In connection with the advertising of the stores you supervise, is it customary for several stores to go together and advertise in the same paper, in the same issue?

A. No.

Q. Are you familiar with the method of advertising of the National Tea Company stores in Minneapolis and St. Paul?

A. No.

Q. You referred to the manner in which your stores displayed their goods and indicated you might have an advantage in the fact your displays were better than that of

the independents. Have you attempted a standard system of display?

A. As far as room will permit if possible.

Q. What is the advantage of such a system?

A. To have our stores uniform.

Q. Does that tend to increase business?

A. I imagine it wouldn't hurt it any.

Q. In connection with the stores you supervise, will you state who directs the advertising policy?

A. We have an advertising man in Minneapolis.

Q. You have one man supervising the advertising for all the stores you supervise?

[fol. 224] A. Yes.

Q. Does he also direct the advertising for the other National Tea stores in the state?

A. I imagine so.

Q. Is there any advantage in such uniform supervision of your Company's advertising policy?

A. I could not say.

Q. Are you familiar with the amount of money allowed the National Tea Company for advertising?

A. I am not.

Q. Would you know anything about the percentage that cost would bear to the sales?

A. I do not.

Mr. Orfield. That is all.

Redirect examination.

By Mr. Doherty:

Q. Do you have anything to do with the matter of advertising or the purchasing of goods for the stores?

A. No.

Q. Or of delivering?

A. No.

Q. Or of forming of the policies of the Company with respect to such or similar matters?

A. I do not.

Q. What is the fact as to whether the competitive conditions existing in these six locations you have testified to, is or is not typical of the conditions existing throughout the territory you supervise?

[fol. 225] A. Yes, sir.

Q. These conditions are typical of the conditions existing throughout the territory?

A. Yes, sir.

Mr. Doherty: That is all.

NELS DE CORYDON, sworn on behalf of plaintiffs, testified:

Examined by Mr. Doherty:

Q. You live where?

A. 5204 Vincent Avenue, South, Minneapolis.

Q. How long have you lived there?

A. Five months.

Q. What is your business?

A. Supervisor of the National Tea stores.

Q. How long have you had that position?

A. For the last fourteen years.

Q. How long have you been supervisor of your present territory?

A. Five months.

Q. What is your territory?

A. The Twin Cities.

Q. St. Paul and Minneapolis?

A. Yes.

Q. Are you familiar with the competition that the National Tea Company has at its various locations in the Twin Cities?

A. To a certain extent, yes.

Q. What is the fact whether or not the Twin City stores of the National Tea are in competition with other stores in the same general character of merchandise?

[fol. 226] A. Yes.

Q. Is that true of all locations?

A. Yes.

Q. What kind of competition do you get?

A. National chains, volunteer chains, independent chains, department stores and independent merchants.

Q. What do you mean by independent chains?

A. Certain grocers combining together and do their buying.

Q. Is that what we have been referring to as volunteer chains?

A. Yes.

Q. I think you had better use the term volunteer chains so we won't be confused in our reference. Have you made observations throughout your territory of the competitive conditions existing in these various locations?

A. I have.

Q. And are you familiar with the character and size of the stores with which your stores compete?

A. Yes.

Q. Are you able by observing a competitive store and its operation to form a fairly accurate judgment as to its gross sales?

A. Yes.

Q. Have you made such observation with respect to your competitors throughout your territory?

A. Some of them, yes.

Q. Will you tell us some of the locations where you have made such observation and tell us what competitive stores [fol. 227] you are encountering in those locations, arranging the stores in the order of the volume of gross sales, beginning with the largest and placing the National Tea Company in its proper position in that order?

A. That is rather difficult.

Q. Can you do that with a fair degree of accuracy?

A. Yes.

Q. Have you a store at 1219 Lowry, North, Minneapolis?

A. Yes.

Q. What are your competitive stores at that point?

A. C. Thomas stores, Millers Grocery, Hausers Grocery and National Tea Company and Bremner Grocery.

Q. And you have enumerated them in the order of their size as to the volume of sales in accordance with your best judgment?

A. Yes.

Q. The C. Thomas stores is the same concern testified to by Mr. Pfister?

A. Yes.

Q. What is the Miller Grocery store?

A. Independent.

Q. One store?

A. As far as I know.

Q. And Hausers Grocery?

A. That is a volunteer chain.

Q. What is the name of the volunteer chain?

A. Red and White.

[fol. 228] Q. And Bremmer Grocery?

A. An Independent.

Q. Do all these stores carry the same general line of goods sold by the National Tea?

A. No, we carry straight groceries. The Thomas store is a combination store, Hausers is a combination store and Bremmer a grocery store only.

Q. You mean meat and groceries by combination?

A. Yes.

Q. You gave the independent rank as to volume. Did you include in that estimate its meat and groceries or just groceries?

A. Both of them.

Q. At that point your store is a grocery store exclusively. If you were judging the grocery business only, would that change the rank?

A. No, we would still rank fourth.

Q. How close to your store are these four other stores located?

A. In the same block at the end of the street, on the opposite side of the street.

Q. Within the block but across the street?

A. Yes.

Q. Have you a store at 2303 East 38th Ave.?

A. Yes.

Q. Is that a combination or grocery store?

A. Grocery store only.

Q. Do you have some combination stores in the city?

A. Yes, we have.

Q. What competition do you have at 2303 East 38th? [fol. 229] Enumerate the stores in the order of their size and whether they are one or more than one store?

A. Walters Market, one store as far as I know; New Fields Market, one store as far as I know; Fairway, volunteer chain; National Tea Company and United Groceries.

Q. Are any of the other stores combination stores?

A. Walters Market is a combination store.

Q. Are you ranking that according to its combination or grocery business alone?

A. Combination.

Q. Where would it rank if you considered only the grocery business?

A. I would say third, because the meat is the main item in that store.

Q. Within what distance from your store are these stores located?

A. Within the same block.

Q. Have you a store at 3531 East Lake Street?

A. Yes.

Q. What others have you there?

A. Piggly Wiggly, which is a combination store.

Q. Is that a local chain?

A. That is a local home owned chain operated through a national chain.

Q. What territory is covered by this chain?

A. The entire state of Minnesota.

Q. What other stores there?

A. Stillmans, a straight grocery store. I believe they have eight stores. The Great Atlantic and Pacific, a combi- [fol. 230] nation store, and the National Tea comes next.

Q. Is your store a combination store?

A. Yes.

Q. Within what distance from your store are these other stores located?

A. Two are neighbors, right next door, all right in a straight line with the Atlantic and Pacific on the corner.

Q. All within the block?

A. Yes.

Q. Have you a store at 1816 East 38th Street?

A. Yes.

Q. Tell us what competitive stores are there?

A. Atlantic and Pacific, a straight grocery store, Everetts Market, an individual owner, a combination store; National Tea, a combination, and Thorsons Market, an individually owned store.

Q. Within what distance from your store are these stores located?

A. Within the block.

Q. Take 4163 Lyndale Avenue, North, Minneapolis. What stores have you there?

A. C. Thomas, a combination, Blankenharms, a combination independent store, National Tea Company, a combination, Red and White store, volunteer chain, groceries only and Frank Irmer, an independent grocery store.

Q. Are these all within a block of your store?

A. Yes.

Q. Take 21 East 26th Street.

A. National Tea store, a combination, 26th Street Market,

[fol. 231] combination, independent. Could I make one correction? Schmidlers Market would come first. He operates two combination stores in Minneapolis. Then the Red and White, groceries only.

Q. Are these three stores in the same block as your store?

A. Yes.

Q. Now take 3401 Chicago Avenue.

A. Jacobs Market, groceries only, an independent store, one store I believe, National Tea Company, a combination and the Sunlight Market, meat only.

Q. Is that a single or chain store?

A. A single store.

Q. Are they within a block of your store?

A. Yes.

Q. Now take 2406 Central Avenue, N. E.

A. May I say one thing. The Thomas stores in some cases have a meat market, but it is not operated by the store, but leased to individual owners. First C. Thomas.

Q. Is that one of the cases?

A. Yes, the owner's name is Prentice for the meat market; Stillmans, the same case applies there, Schmidler has the meat market.

Q. Is that Stillman Company?

A. No, Stillman Company is a chain of eight stores.

Q. Any other stores?

A. Great Atlantic and Pacific, a combination store, National Tea Company, Red Owl and Northeast Fruit store, [fol. 232] fruit and vegetables, an independent, one store.

Q. Are all these five stores within a block of your store?

A. Yes, within the block.

Q. Take your store at 5300 Lyndale Ave., South.

A. Piggly Wiggly, a combination store, Land and Food stores, operating two stores and National Tea Company. There are several independent merchants there, but I haven't the names.

Q. Within the block?

A. Yes.

Q. Are there any stores in Minneapolis, grocery or combination stores that compete generally with your system of stores as distinguished from one store at a particular location?

A. Kroeger Grocery Company, a national chain of 4,000 stores, operating one store in Minneapolis in direct competition with our entire City of Minneapolis.

Q. Where is that located?

A. In the Sears Roebuck store.

Q. Do you know whether he has any other stores in Minnesota?

A. I don't believe so.

Q. What other general competition do you have?

A. We have department stores.

Q. What is the Witts Market?

A. We have two Witts stores, one downtown, which is in direct competition with our entire Minneapolis unit and [fol. 233] another located next to the 2212 Hennepin Avenue store.

Q. Is that a chain store?

A. It is a combination operating just two stores.

Q. It that all in the state?

A. Yes.

Q. Do you have competition with Jewell Tea stores?

A. The Jewell Tea have automobile loads and deliver direct from one warehouse to door to door. We have the same condition with the Grand Union, who operate and put their groceries in a small car and go from door to door.

Q. Are the Grand Union and Jewell Tea both concerns which operate on a national scope?

A. As far — I know.

Q. Do they have store locations or do they do all their business with automobiles?

A. In the State of Minnesota they have wagon and automobile loads, but in certain parts of the country they have stores.

Q. Have you any idea how many wagons or loads they have in operation in Minneapolis?

A. I couldn't say, quite a few.

Q. Is the same thing true of the Grand Union?

A. Yes.

Q. What about the department stores?

A. Certain department stores have a complete combination grocery store which operates in direct competition with our entire unit and we have the smaller five and ten cent [fol. 234] stores and five cent to a dollar stores who are handling cold and canned meats, which are in competition with our unit here and the Woolworth stores have a line of groceries and meats, but not a complete line.

Q. What variety stores do you refer to?

A. Kresge and Woolworths.

Q. What department stores?

A. Donaldsons, the Dayton Company, the Leader and Powers Mercantile Company.

Q. Do they all have grocery departments in competition with your Minneapolis stores?

A. Yes.

Q. These department stores are all located in the business center of Minneapolis?

A. Downtown business center.

Q. Are all these stores which you testified are in competition with you, handling the same line of goods as is handled by your stores?

A. Yes.

Q. And are they all in direct and immediate competition with your stores?

A. Yes.

Q. That is those located in that particular location compete with your store in that location?

A. Yes.

Q. Now in St. Paul, take 1041 Grand Avenue and enumerate the stores there according to volume of business.

A. We have C. Thomas store, combination, which is in the same block, directly across the street, then we have two Kleins stores, Kleins No. 1 to the east and Kleins No. 2 to [fol. 235] the west within three blocks which are in direct competition with our store and then our own store.

Q. What kind of a concern is the Kleins stores?

A. They have a combination store and as far as I know they operate two stores.

Q. Under what name?

A. The same name.

Q. What stores are there at 173 Western Avenue?

A. Johnsons combination store. They have only one store as far as I know, National Tea Company, combination store, Salitas Market, combination store, one store as far as I know and S. Zeff, groceries only, operating one store.

Q. What distance are these stores from you?

A. Johnsons is two and one-half blocks west and the other stores are in the same block.

Q. Take 252 South Cleveland.

A. Wobig Company, Fairway store, a combination store, National Tea Company, a combination store, Groveland Park Market, a combination store, one store, Burnschwaggers, combination store, one store as far as I know.

Q. Take 1816 St. Clair Street. If you cannot find it let it pass.

Recess until 2 P. M.

Q. In respect to your store at 1041 Grand Avenue, is there a Prescott Cash and Carry store within competing range of that?

A. Yes.

Q. What is that?

A. They have only one store as far as I know.

[fol. 236] Q. Now, as to stores in St. Paul competing generally with your St. Paul stores, what are they?

A. Bannons Department Store.

Q. You mean grocery store in the department store?

A. It is a complete bakery and they have certain items of groceries. The Golden Rule has a complete meat and grocery store. The Emporium has a grocery store. Mannheimers have a bakery department and we have in direct competition, Johnsons Cash and Carry on Wabasha, a straight grocery store.

Q. Chain or not?

A. As far as I know only one store.

Q. Is that a large store?

A. They have three stores but I understand it is three brothers. It is a very large business and a very small store.

Q. What else?

A. Then we have Stanleys Meat Market in the same block in direct competition with all our St. Paul stores, meats only with just a small line of groceries.

Q. Any others?

A. No, except five cent to a dollar stores, but not a complete line.

Q. Have you mentioned Michaud Bros.?

A. No, Michaud Bros. have two stores, both combination stores, a complete line and in direct competition with all our St. Paul stores.

Q. And where are they?

A. One down town and one at 1816 St. Clair. The down-

[fol. 237] town store is located up on 8th or 9th and Robert.

Q. How does the size of it compare with your stores?

A. Generally speaking it would be larger than 90% of our stores.

Q. How would you compare the gross sales?

A. We have nothing to compete with it, there is no comparison whatever.

Q. The same line of goods?

A. Yes, the same line of goods.

Q. Are there any other stores giving you general competition that you can think of?

A. Not that I can think of right now.

Q. Is the competition in these locations you have testified to typical of the competition that exists generally in the territory under your supervision?

A. Yes.

Q. And have you competition at every point?

A. Yes.

Mr. Doherty: That is all.

Cross-examination.

By Mr. Orfield:

Q. You referred to your store at 1219 Lowry Avenue, North and mentioned the C. Thomas store as your leading competitor. Is that a chain store?

A. Yes.

Q. You referred to Millers Grocery store as your second largest competitor. Do they give credit?

[fol. 238] A. I am in no position to say.

Q. Do they maintain a delivery service?

A. Somewhat.

Q. Does your store in that location give credit?

A. Very little.

Q. Does it give credit to the extent of 5% or the total sales?

A. No.

Q. You mentioned Hausers Grocery store. Do they give credit?

A. Yes.

Q. Do they maintain a delivery service?

A. Yes.

Q. You mentioned a store at 2303 East 38th Street, Walters Market. Does Walters Market maintain delivery service?

A. I don't know.

Q. Does it give credit?

A. I don't know that.

Q. You mentioned the New Fields Market as your second leading competitor. Does that store maintain a delivery service?

A. It does.

Q. Does it give credit?

A. It does.

Q. How long has your store in that location been in operation there?

A. I cannot give you the exact date.

Q. Approximately.

A. I would say a few years, but I would not be sure of that.

Q. Would your records show the length of time these stores have been in operation?

[fol. 239] A. Our office records would.

Q. Can you give us that information later?

A. I can.

Q. I request you do so in relation to all the stores you have mentioned.

A. All right.

Q. You referred to 3531 E. Lake Street and mentioned the Piggly Wiggly store as your leading competitor. Is that a chain store?

A. Yes.

Q. You mentioned Stillmans as your second leading competitor. Is that a chain store?

A. Yes.

Q. And the Atlantic and Pacific. Is that a chain store?

A. Yes.

Q. Generally would you know how long these stores have been in operation?

A. I would say they have been in business several years.

Q. Then we will ask you to get that information for us. You mentioned your store at 1816 East 38th Street and stated that the Atlantic and Pacific was your leading competitor. That is a chain store?

A. Yes.

Q. You mentioned Everetts Market. Do they maintain delivery service?

A. I don't know.

Q. Do they give credit?

A. I don't know.

Q. You mentioned your store at 4163 Lyndale Ave., North

[fol. 240] and referred to the C. Thomas store as your leading competitor?

A. Yes.

Q. You referred to Blankenharms as the second leading competitor. Does that store maintain a delivery service?

A. Yes.

Q. Does it give credit?

A. Yes.

Q. You referred to a store at 21 W. East 26th and referred to Schmidlers Market as your leading competitor. Schmidlers have two stores?

A. Yes.

Q. In other words it is a chain store?

A. Yes.

Q. You stated you were second and stated that the 26th Street Market was third in point of size at that location. Does the 26th Street Market give credit?

A. Yes.

Q. Does it maintain a delivery service?

A. Yes.

Q. You mentioned your store at 3401 Chicago and stated Jacobs Market is the leading competitor. Does the Jacobs Market maintain delivery service?

A. Yes.

Q. Does it give credit?

A. Yes.

Q. You stated you have a store at 2406 Central Avenue, N. E. and that the C. Thomas Store is your leading competitor and that Stillmans is your second leading competitor [fol. 241] and the Great Atlantic and Pacific is the third leading competitor. Are these stores all chain stores?

A. Yes.

Q. You referred to your store at 5300 Lyndale Ave., South and stated that Piggly Wiggly and the Land and Food Stores are your two leading competitors. These are both chains stores?

A. Yes.

Q. Among the stores which give you competition throughout the City you mentioned Witts two stores. They are a chain store?

A. Yes.

Q. You mentioned the Jewell Tea as giving you general competition. Does the Jewell Tea maintain a delivery service?

A. That is the way they sell merchandise.

Q. You stated you have competition from several department stores. Do they maintain a delivery service?

A. In groceries, I do not know.

Q. Do they give credit?

A. In groceries, I don't know.

Q. You referred to your store at 1041 Grand Avenue and stated that the C. Thomas store and the Kleins stores are your two leading competitors. They are both chain stores, are they not?

A. Yes.

Q. You referred to your store at 173 Western Avenue and stated that Johnsons is the store giving you the greatest competition.

Mr. Doherty: Whether or not that does mean the greatest [fol. 242] competition, I don't know. He referred to the store as giving the largest volume.

Q. You stated Johnsons is the store making the largest sales in that locality. Does the store maintain a delivery service?

A. I don't know.

Q. Do they give credit?

A. I don't know that.

Q. You mentioned Bannons as a store in St. Paul competing with you generally throughout the city. Do they maintain a delivery service?

A. In groceries, I don't know.

Q. Do they give credit?

A. In groceries, I don't know.

Q. You mentioned the Golden Rule as another store competing with you generally. Does the Rule maintain a delivery service?

A. I don't know in the grocery line.

Q. Does it give credit?

A. I don't know in the grocery line.

Q. You mentioned the Emporium as another store in this class. Does this store maintain a delivery service?

A. I don't know.

Q. Does it give credit?

A. I don't know.

Q. You are supervisor of the Twin City territory?

A. Yes.

Q. Does it include a greater district?

A. No.

Q. How many stores have you in St. Paul and Minneapolis?

[fol. 243] A. 71.

Q. How many in Minneapolis?

A. Approximately 51 or 52.

Q. And about 20 in St. Paul?

A. Yes, that is right.

Q. To what features of the business does your supervision extend?

A. Store operations, merchandising.

Q. Advertising?

A. No.

Q. Have you anything to do with the advertising?

A. No.

Q. Would you however from your connection with this business know whether in advertising, the St. Paul stores, for instance, advertise as a group or individually?

A. Give me the question again.

Q. When your organization advertises in one of the St. Paul papers, does one store advertise alone or do all the stores advertise in the same paper?

A. The same group advertises together.

Q. What is the purpose of advertising together?

A. To make the stores uniform.

Q. Is there any other advantage than uniformity in having the same paper carry the ad of all the stores in the city?

A. You really couldn't take 20 stores and put the same items in the newspaper.

Q. It would be more expensive if you should advertise the 20 stores separately?

A. Naturally.

[fol. 244] Q. Have you anything to do with the buying?

A. No.

Q. Do you know whether the purchases for these various stores are made by cash or credit?

A. No.

Q. Do you supervise the display features of these various stores?

A. Yes.

Q. What is the policy of your company with reference to uniformity of display?

A. That question is not clear to me.

Q. Have you developed a policy of displaying your goods in the various stores in a similar way so you can give instructions to the various stores as to a general method of displaying your goods?

A. The general method, yes, but not 100%.

Q. Does the fact you display your goods in this uniform way, assist in getting business for the stores?

A. We believe so.

Q. When is the speed of turnover in the stores under your supervision? How many turnovers approximately do you have in a year?

A. It is not under my supervision of the stores.

Q. In looking for locations for new stores, what advantages do you consider important in determining your position?

A. Location.

Q. What factors enter into that?

A. Traffic, ordinary building up of a neighborhood.

Q. Do you select your location at all with reference to [fol. 245] the question of whether there are other chain stores already competing in that neighborhood?

A. That would make no difference.

Q. Is it the policy of your company to own its stores? Generally, do you own the stores or rent them?

A. Are you talking about the Minnesota division?

Q. Yes.

A. We rent the building.

Q. Do you rent all the stores?

A. That again would not come under my supervision.

Q. Do you know why it is generally the policy of the company to rent rather than to own?

A. I don't know.

Q. Would the fact that tax rates on real estate are high in Minneapolis and St. Paul be a factor in determining that policy.

A. I would not know the tax rates are the question at all.

Q. What is the policy of your company with reference to the length of the leased period?

A. That comes under the office real estate department.

Mr. Orfield: That is all.

Redirect examination.

By Mr. Doherty:

Q. How does the size of the C. Thomas stores compare with the National Tea stores with respect to volume of sales in this territory?

[fol. 246] A. There is no comparison, they are far ahead of us generally speaking.

Mr. Doherty: That is all.

T. G. Harrison, sworn on behalf of plaintiffs, testified.

Mr. Doherty: I would like to digress from the regular line of witnesses for the convenience of those who have been subpoenaed.

The Court: All right.

Examined by Mr. Doherty:

Q. You have been subpoenaed here by the plaintiffs in this case?

A. Yes.

Mr. Doherty: I might explain the purpose of your being subpoenaed. We think it is material in this case to give the Court some information about volunteer chains and thought you were one of the people who could do it for us.

Q. What is your position?

A. Vice-President and General Manager of Winston and Newell Company.

Q. Is Winston and Newell one of the units in the so-called volunteer chain of grocery companies?

A. Yes.

Q. What is that chain?

A. Independent Grocers Alliance.

Q. The Independent Grocers Alliance operates in what territory?

A. 42 states in the Union.

Q. Give us some information about the form of the organization, how the retail stores are linked with the wholesalers [fol. 247] and the wholesalers with each other?

A. The independent retailers are associated with their wholesalers and by that agreement, there is no ownership.

The wholesalers are affiliated with the National Organization by agreement.

Q. You refer to the National Organization of Wholesalers?

A. Yes.

Q. And what is the plan, is there a wholesaler in each state?

A. No, he may cover several states or only part of a state.

Q. And all retailers in that district are affiliated with wholesalers in the district?

A. Yes, and the wholesalers in that district are affiliated with the wholesalers in another district.

Q. Tell us approximately how many stores there are in Minnesota of the I. G. A. chain?

A. 140.

Q. How distributed?

A. Pretty generally over the state.

Q. Does the I. G. A. combine the various demands of the purchasers for the purpose of making purchases in wholesale?

A. Part of their requirements.

Q. You say part of it. Is there anything in their membership which requires them to buy any proportion of their requirements?

A. No, that is purely voluntary.

Q. As a matter of practice in Minnesota, can you give us [fol. 248] an idea of the percentage of retailers who purchase through Winston and Newell?

A. We believe about 60%, about 60% of their dry grocery requirements.

Q. That is excluding perishables?

A. Yes, perishables and meats.

Q. Do the wholesalers of the various districts combine their purchasing requirements?

A. Yes.

Q. So you have a consolidation eventually of the wholesale demand of all the retail units?

A. Yes, the wholesalers purchase about 25% of their demand through their headquarters.

Q. And the balance?

A. Directly.

Q. I suppose the purchasing, generally speaking, is on a cash discount basis?

A. Yes.

Q. Do you know whether there are any special discounts obtained over and above the usual cash discounts for volume purchases?

A. There may be in some instances.

Q. But the extent you would not know?

A. No.

Q. Does the wholesaler furnish any supervisory service to the retailers in his district?

A. Through their salesmen.

Q. The wholesaler's Salesmen?

A. Yes.

Q. Are these salesmen trained in the work of supervising the retailers?

A. Yes.

[fol. 249] Q. And is that done by the wholesaler or the general headquarters?

A. Both.

Q. Is there anything in the nature of supervision furnished by the general headquarters?

A. To the retailers?

Q. Yes.

A. No.

Q. As to the ultimate source of the purchases by the combined wholesalers, is that generally speaking from manufacturers, jobbers or what source?

A. Various sources.

Q. Including manufacturers?

A. Yes.

Q. Would the greater percent of it be from manufacturers?

A. I believe so, yes.

Q. Does the I. G. A. have private brands under which it sells various items of merchandise?

A. Yes.

Q. Do you know about how many privately branded articles it sells?

A. It would be a rough estim-te. I would say 100.

Q. Are those privately branded articles sold to anybody except the members of the I. G. A.?

A. No.

Q. In the matter of the supervision furnished by the salesmen from the wholesalers, what are the principal features covered by the supervision?

A. Display, store operation, advertising.

[fol. 250] Q. Do you aim to have uniformity of display in the various retail stores?

A. As far as possible.

Q. Has it been possible to carry that out to a considerable extent?

A. Fairly well, yes.

Q. Do you have some store insignia identifying you as I. G. A.?

A. Yes.

Q. What is it?

A. A glass sign in the window and a store sign.

Q. What is the insignia?

A. The glass sign is circular with a shield superimposed on an eagle with the reading I. G. A. in the center.

Q. Is that large?

A. About 18 inches in diameter. They have one on each plate glass generally.

Q. Is there anything in the paint color scheme which is used?

A. Blue and white.

Q. Is the entire front of the store painted in blue and white?

A. Yes.

Q. The uniformity of display involves such matters as shelving and counters and things of that sort?

A. Yes.

Q. Do you have joint advertising of the I. G. A. stores to any extent?

A. Yes.

Q. Where is such advertising matter prepared?

[fol. 251] A. Originally in the Chicago office, national headquarters and in the local offices.

Q. You mean the wholesale offices?

A. That is right.

Q. And how is that used? I suppose you have newspaper and other display advertising?

A. That is correct.

Q. In a City like Minneapolis, do you usually have one advertisement run in the daily papers?

A. We don't use newspapers in Minneapolis.

Q. Not at all?

A. No.

Q. Do you in St. Paul.

A. No.

Q. Or Duluth.

A. No.

Q. Anywhere in Minnesota?

A. Individual stores will use their local newspapers.

Q. I am referring now to joint advertising.

A. No.

Q. What form does your advertising take?

A. Besides newspapers, circular advertising and hand bills.

Q. Take the hand-bills you distribute in Minneapolis, what stores would be advertised by those?

A. Part of the bill would apply to all stores and part is individual to the individual stores.

Q. Any other form of joint advertising?

A. Radio.

Q. Is that divisional or national?

[fol. 252] A. Divisional.

Q. But not national at all?

A. No.

Q. Is there any newspaper or magazine advertising done on a national basis?

A. No.

Q. Do you have any supervision as to the accounting or bookkeeping systems used by the members?

A. To a limited degree.

Q. You recommend a certain system of bookkeeping to the members?

A. Yes.

Q. Do you do anything about installing a system?

A. Where it is requested, yes.

Q. Each wholesaler of course has a warehouse from which distribution is made to that section or division, serviced by that wholesaler?

A. That is correct.

Q. Does Winston and Newell serve more than the State of Minnesota?

A. Yes, Western Wisconsin, North and South Dakota, Iowa and part of Montana.

Q. Do you have figures on the volume of sales of your retail stores in Minnesota?

A. No.

Q. Do the stores make reports to the wholesaler in respect to their sales?

A. No.

Q. Do you have figures as to the volume of merchandise distributed from Winston and Newell's warehouse to the Minnesota stores?

[fol. 253] A. Yes.

Q. Could you give us the approximate figure on that for 1935?

A. I couldn't give you that divided by I. G. A. stores.

Q. Does Winston and Newell sell to others than I. G. A. stores?

A. Yes.

Q. Your figure would combine the other stores with the I. G. A.?

A. Yes.

Q. Have you a rough estimate of the percentage to I. G. A.?

A. Approximately 70% to I. G. A.

Q. And what would be the total in Minnesota?

A. About two and one-half million.

Q. Of which 70% would be I. G. A.?

A. Approximately.

Q. Have you figures Mr. Harrison on the total distribution of the wholesalers in the entire United States?

A. No.

Q. Or do you know of any statistics on the aggregate sales of the I. G. A. retail stores throughout the United States?

A. No.

Q. Or the volume of purchases and distribution by the central headquarters?

A. No.

Q. How long, if you know, has the I. G. A. been operating in the United States?

A. Approximately eight years.

[fol. 254] Q. And how long in Minnesota?

A. Six years.

Q. Has it experienced a rapid growth in Minnesota?

A. Not particularly, no.

Q. Generally speaking, do the I. G. A. stores operate on a cash and carry basis or a delivery and credit basis?

A. Both ways, but I couldn't give you a proportion.

Q. Is that optional with the stores?

A. Yes.

Q. And a fair percentage of the stores do business either way?

A. Yes.

Q. How about the delivery from the warehouse to the individual stores, is that done by wholesalers?

A. We have trucks who handle that delivery, yes.

Q. And the trucking and warehouse charge is added to the cost of the goods?

A. There is no direct warehouse charge as such.

Q. What about the trucking?

A. That is a separate charge.

Q. Made to the retailer for which they pay outside of the price of the goods itself?

A. Yes.

Q. You don't have any cash and carry as far as wholesale delivery is concerned?

A. I don't understand.

[fol. 255] Q. Is it not a practice for the retail store to come to the wholesaler and carry away what they want?

A. Yes, some of that is done.

Q. But it is not the general practice?

A. No.

Q. I think I combined the feature of credit and delivery and did you answer, in regard to retail stores?

A. Some deliver and some do not.

Q. And some give credit and some don't?

A. Yes, that is right.

Q. Do the individual retail stores pay the wholesaler in some form compensation for the service rendered as supervisor?

A. No.

Q. You mean there is no separate charge made for that, that goes with its membership in the association?

A. Yes.

Q. Is there any minimum requirement as to the goods which the retailer will purchase from the wholesaler?

A. No.

Q. So the supervisory service is given as a method of cultivating the good will of the retailers?

A. Yes.

Q. And is treated by the wholesaler as an expense of operation?

A. Yes.

Q. Is the advertising prorated among the stores?

[fol. 256] A. Based on their usage of the advertising.

Q. When you send out hand bills in any particular city, isn't that for the use of all the stores in the city?

A. No, the individual stores purchase what hand bills they wish to use.

Q. Is it pretty generally true that all avail themselves of that privilege?

A. Generally so.

Q. Perhaps I asked you this question—What services or aid to the individual retail stores is rendered by the central office?

A. Quite a few.

Q. What?

A. Suggestions on advertising, merchandise, store operation, etc.

Q. Is that done by sending men out to visit the stores or sending out literature?

A. Both ways.

Q. How does the central office get paid for that?

A. That is part of their overhead. You are speaking of the wholesale office?

Q. I am speaking of the central headquarters.

A. That would change my answer. Do you want it with regard to the national organization?

Q. I was asking whether the Chicago National headquarters render any such service?

A. They do.

Q. What does it consist of?

A. Suggestions on merchandising and advertising.

[fol. 257] Q. Is that to the wholesaler or wholesaler and retailer both?

A. Wholesaler only.

Q. Is any service rendered directly by the National central office to the individual retailer?

A. No, only through the wholesalers.

Q. For the purpose of sales and supervision, how large a territory would one supervisor cover?

A. It varies considerably, approximately 20 stores.

Q. And that work is a full-time job for that supervisor?

A. Correct.

Q. It is generally true throughout the territory of which you are concerned, it competes with other retail stores in most of your locations?

A. Yes.

Q. Do you compete generally with the so-called ownership chains?

A. Yes.

Q. And individually owned stores?

A. Yes.

Q. And other volunteer chains?

A. Yes.

Q. And I suppose with small and big chains?

A. Yes.

Q. I suppose you encounter each of those forms of competition in most of your locations?

A. Generally speaking, yes.

Q. What other volunteer chains do you compete with in Minnesota?

A. The Red and White stores, the Rightway stores, Allied [fol. 258] stores, Fairway stores, Food Guild stores, Community stores. I think that covers the principal ones.

Q. Could you give these stores approximately in order of their volume of business in Minnesota?

A. No.

Q. Or as to the number of stores they have in Minnesota?

A. I have no information on that.

Q. Do you — whether the I. G. A. is the one who operates most extensively in Minnesota or the volunteer chains?

A. I couldn't answer that.

Q. But all of these you mentioned operate in Minnesota to a very substantial extent?

A. Yes.

Q. The co-operative chains are divided, as I understand it, at least into two classes; one that is called the retailer-wholesaler and the other the wholesaler-retailer, such as the I. G. A. and the others you enumerated?

A. Yes.

Q. You spoke of co-operative chains, what did you refer to as distinguished in the ordinary sense from the volunteer chains?

A. My understanding would be in the co-operative chains, the retail dealers are part owners in the wholesale establishment.

Q. Is there any other name that applies to that as distinguished from the other type of volunteers?

A. None that I know of.

Q. Can you tell us which of the volunteer chains you [fol. 259] enumerated would come into the class of co-operatives?

A. The Allied and the Fairway stores.

Q. And the I. G. A. is not a co-operative?

A. No.

Q. What do you call that?

A. We call it a volunteer.

Q. That means that the I. G. A.'s individual retail store operators do not own the wholesaler in its division?

A. That is true of this locality but not true generally. We do have co-operatives in other districts.

Q. Which predominates?

A. The corporate set up where the dealers do not own an interest in the wholesale house.

Mr. Doherty: That is all.

Cross-examination.

By Mr. Orfield:

Q. You spoke of your organization as volunteer chain. Does that mean that all action taken by the various members is entirely voluntary?

A. Yes.

Q. If you make a suggestion with reference to advertising, they may follow it or may not?

A. Correct.

Q. But would it be true that you could increase the efficiency of the various units if they would follow your suggestions to a greater extent than they do?

A. We believe so.

[fol. 260] Q. You make suggestions with reference to store management?

A. Yes.

Q. I take it those suggestions are followed only to a limited extent?

A. Correct.

Q. Would the true chain store in that respect have an advantage in economy of operation?

Mr. Doherty: Objected to as improper cross-examination.

The Court: Objection sustained.

Q. Does your service include the giving of credit to the various units?

A. Wholesale credit?

Q. No, I mean credit working toward the establishment of stores?

A. No.

Q. Do you give credit in the usual course of business?
A. Yes.
Q. Do you give discounts for cash?
A. Yes.
Q. Will you state the approximate amount of these discounts for cash?
A. One percent in seven days.
Q. Is that the only cash discount?
A. Yes.
Q. Is there a difference in price given in case of large quantity buying?
A. No.

Mr. Orfield: That is all.

[fol. 261] G. E. Peterson, sworn on behalf of plaintiffs, testified.

Examined by Mr. Doherty:

Q. You are also here under subpoena?
A. Yes.
Q. I have never discussed this case with you or your testimony in this case?
A. No.
Q. Where do you live?
A. 1917 Princeton Ave., St. Paul.
Q. What is your business?
A. Manager of the Twin City Wholesale Grocer Company.
Q. Is the Twin City Wholesale Grocer Company a unit of a volunteer chain of grocery stores?
A. No.
Q. Is the Twin City Wholesale Grocer Company affiliated in some way with the Fairway stores?
A. I don't know that there are any Fairway stores, except as designating a brand of merchandise, distributors of food products.
Q. Are not the Fairway stores understood to be a volunteer chain of stores?
A. It is a corporation owned by retailers.
Q. What is the name of the Company?
A. Twin City Wholesale Grocer Company.

Q. And that Twin City Wholesale Grocer Company is a wholesaler?

A. It is a wholesale institution.

Q. And it is owned and operated by a group of retail merchants?

[fol. 262] A. Yes.

Q. And these retail merchants owning that wholesale establishment specialize in a brand of goods called the Fairway?

A. Yes.

Q. Is that just a brand?

A. Yes.

Q. How many different items are sold under the Fairway brand?

A. Probably 125, 150, I don't know definitely.

Q. In what territory does the Twin City Wholesale Grocer Company do business?

A. Minnesota, North and South Dakota, Northern Iowa and Western Wisconsin. That is the retailers are located in those territories.

Q. And that is all.

A. Yes, as far as I know.

Q. And how many retailers in the State of Minnesota belong to the organization?

A. I don't know the definite number.

Q. Could you give it to us approximately?

A. Anyway between four and five hundred.

Q. And are they distributed generally over the state?

A. Fairly well.

Q. Including the Twin Cities and Duluth.

A. Not Duluth, not from the Twin City Wholesale Grocer Company at Duluth.

Q. Is there another corporation there affiliated with the same association?

A. Not affiliated, but they use the same brand, they operate their own wholesale unit at Superior.

[fol. 263] Q. Is there any relationship between the wholesaler in Duluth and the Twin City Wholesale Grocer here?

A. Only as far as an agreement to use the brand.

Q. The privilege is shared between the two?

A. Yes.

Q. And the members belonging to the Duluth unit, are

they located only in Duluth or is that territory more extensive?

A. There is some outside of Duluth and Superior.

Q. But mainly in Duluth?

A. I presume so.

Q. Is this Twin City Wholesale Grocer Company and its members the form of organization referred to by Mr. Harrison as the co-operative?

A. I don't know.

Q. That is not the term you use?

A. No.

Q. By what is it known to you, if anything, as distinguished from the volunteer chain?

A. We have never made a distinction of any kind. Just operated our business on a policy and system and never had any occasion to make a distinction.

Q. When was your company organized?

A. In 1914 I think.

Q. You say the Twin City Wholesale Grocer Company is a stock corporation?

A. Yes.

Q. With the stock distributed among the retailers who own it?

[fol. 264] A. Yes.

Q. Is that stock owned by the retailer evenly or can one own more than another?

A. The common stock is equal, you cannot own more than just so much.

Q. But you can own less?

A. No.

Q. Tell us how the Twin City Wholesale Grocer Company operates with respect to supplying the members with merchandise?

A. They operate a warehouse. We buy the merchandise and place it in the warehouse and distribute it from there to the members, the retailers.

Q. Is it brought in in anticipation of the demands of the retailers or as requisitioned by the retailers?

A. Both ways.

Q. And as to the source from which Twin City Wholesale Grocer Company buys the merchandise it distributes to its members, do they operate a factory?

A. We operate a coffee roasting plant, that is all.

Q. That is the only activity in the nature of manufacturing?

A. Yes.

Q. And the goods you buy for your members, where is it purchased?

A. From manufacturers, or packers or processers, whatever the commodity may be.

Q. And you combine the requirements of your members in making those purchases?

[fol. 265] A. I don't understand that.

Q. Can you tell us to what extent approximately, the members of the Twin City Wholesale Grocer Company make their purchases of merchandise through the Twin City Wholesale Grocer Company?

A. I cannot tell you to what extent.

Q. Can you give us a rough idea?

A. It would be just a guess because I have no statistics or records to go by.

Q. Would you think it would be safe to say 50%.

A. Yes, of the commodities we distribute and handle.

Q. And those commodities include what?

A. Dry groceries and coffee and tea.

Q. As distinguished from perishables?

A. Yes.

Q. Would you say 75%?

A. I would not say, because I have no figures to verify any statement I might make on it.

Q. Is there anything in the relationship of the individual stores to the Twin City Wholesale Grocer Company that requires them to purchase any maximum or any particular amount of merchandise from the Twin City Wholesale Grocer Company?

A. No.

Q. Can you give us any figures Mr. Peterson as to the volume of the goods distributed by the Twin City Wholesale Grocer to its members in any one year, 1935?

[fol. 266] A. I don't remember the exact figures, I think somewhere around five and one-half million.

Q. Have you any figures on aggregate sales of your retail members in Minnesota for any year?

A. No.

Q. You couldn't give us that figure even roughly?

A. No.

Q. Does the Twin City Wholesale Grocer Company furnish any other service to its members other than the purchase and sale of merchandise?

A. We have some service, yes.

Q. What would that be?

A. Well we have—You asked for the volume of business. Did you mean Minnesota or the Twin City Wholesale Grocer Company?

Q. For Minnesota?

A. I tried to explain that was the volume for the entire organization other than wholesale.

Q. Would the larger portion be in Minnesota?

A. Yes.

Q. What percent of all stores are located in Minnesota?

A. Just a little over half.

Q. Does the Twin City Wholesale Grocer Company furnish any other service to its members other than the purchase and sale of merchandise?

A. It does.

Q. What other service does it render?

A. Merchandise help of different nature, such as furnishing a weekly bulletin, advising them of market conditions and things of a general nature that would help them to improve their business.

[fol. 267] Q. Do you have any persons in the nature of supervisors who go about visiting the stores and giving individual storekeepers advice?

A. Yes.

Q. What features does that cover?

A. No definite features, anything that pertains to helping them to build up their business, accounting, merchandise display, advertising, whatever comes under their jurisdiction.

Q. Anything that might tend to increase the efficiency of the store operation?

A. Yes.

Q. How many such supervisors do you have in Minnesota in relation to the number of stores?

A. We have two in Minnesota.

Q. Who give all their time to that work?

A. Yes.

Q. Are they men trained in that line of work?

A. I don't know if they are specially trained, but they

are men who have given their ability to it, but they have not been specially trained for it.

Q. They are men of experience in retail merchandise?

A. Yes.

Q. Do you attempt anything in the way of uniformity of display of goods, store arrangement?

A. Not as far as uniformity is concerned, no.

Q. Each store is given advice as to its own individual lay-out?

A. Yes, as it applies to that particular business.

Q. Is there any store insignia?

[fol. 268] A. Yes.

Q. What does it consist of?

A. It consists of a decalcomania sign with the inscription "Fairway Finer Foods," advertising the brand of goods only. It is placed on the plate glass window and if there is a sign on the store that is usually painted on with it.

Q. Any paint scheme?

A. No.

Q. Do the Fairway stores do any joint advertising?

A. Yes.

Q. Who is it managed by?

A. By the retailers themselves as a rule, supervised by our advertising man, but they designate what they want to advertise.

Q. Is that newspaper or hand-bills or what?

A. Both.

Q. Display cards used in stores?

A. Yes.

Q. You mean you have an advertising expert who handles that?

A. Yes.

Q. And he consults the wishes of the individual store keepers and from their ideas and requests, makes up the form of advertising?

A. Yes.

Q. A newspaper advertisement of that character would be intended to apply to how much territory?

A. Except in the Twin Cities, it applies to the individual merchants.

[fol. 269] Q. In the Twin Cities daily papers, it would apply to all the stores in the city in which it is published?

A. Yes.

Q. As a matter of practice, do the members use any individual store advertising in the Twin Cities?

A. I don't know, I haven't noticed any.

Q. What is the plan of operation with respect to financing the activities of the Twin City Wholesale Grocer Company to cover such things as supervision, advertising, etc.?

A. It comes out of the amount of the charges over the cost of the merchandise retained by the office.

Q. There is no independent contribution for that purpose?

A. No.

Q. The wholesaler adds enough to the cost of the merchandise to take care of that?

A. Excep in the case of hand-bills. The retailer pays for what he gets but we furnish him the service of preparing it, that is if he wants it.

Q. What about credit and delivery charges? Is there a uniform practice about that?

A. Yes.

Q. Do the Fairway stores give credit as a practice?

A. The individual stores?

Q. Some.

A. Some do and some do not.

Q. That is left to the option of the individual stores?

[fol. 270] A. Yes.

Q. And is the same thing true with respect to delivery?

A. Yes, that is true of the delivery too.

Q. Does the Twin City Wholesale Grocer Company deliver to the in-vidual stores the goods purchased by the individual stores?

A. They do within the city limits.

Q. Of St. Paul and Minneapolis?

A. Yes.

Q. Otherwise it is a matter of railroad transportation?

A. Yes.

Q. Are all goods delivered from a central warehouse in Minneapolis, I mean goods purchased by the members from the Twin City Wholesale Grocer Company? Is it delivered to the members?

A. From the St. Paul warehouse. We have no Minneapolis warehouse. Either it is delivered or they pick it up themselves, they have that privilege.

Q. But the bulk of the merchandise is delivered by the wholesaler?

A. Yes.

Q. I think you said something about the supervisor advising the retailer in respect to accounting.

A. They assist them on that or any other problems they have that they can assist them with. If they have bookkeeping or accounting problems or merchandising display problems, they give them assistance on that. As a rule they are at the call of the retailers and are in different parts of the territory at different times.

[fol. 271] Q. The Fairway stores compete generally throughout the State of Minnesota with independent stores and ownership chains and other volunteer co-operatives?

A. Supposedly. We don't have any particular detailed information on what their competition is.

Q. You have no particular occasion to analyze that detail?

A. No.

Q. Are all your sales to your members made on a cash discount basis?

A. Yes, or on a COD basis, depending on the conditions.

Q. If it is COD there is also a discount?

A. Yes.

Q. And I suppose on its own purchases, the Twin City Wholesale Grocer Company also buys on a cash discount basis?

A. Yes.

Q. Do you know whether any special discounts are obtained over and above the usual cash discount for volume purchases?

A. Except as manufacturers or processors have a regular policy of quantity discount.

Q. Is it the general policy of manufacturers and wholesalers to give special discounts on a volume basis to anybody who wants to buy from them, in excess of the ordinary cash discount which you get regardless of volume?

A. Only between carload and less than carload lots and such things as that.

Q. You have one regular discount rate that everybody gets regardless of quantity?

[fol. 272] A. Correct.

Q. How much of a volume must you buy in order to get anything better?

A. I don't know, it depends on what the manufacturer's policy is.

Q. The policy of the manufacturers differ in that respect?

A. Quite often.

Q. What is generally true?

A. Of what?

Q. As to the giving of discounts by manufacturers in excess of regular cash discount for volume purchases?

A. It varies according to the product of the manufacturer. There may be only a few that have the quantity discounts. I couldn't designate those, but there are cash discounts and trade discounts.

Q. What is the distinction?

A. Usually the trade discount is more or less figured by the quantity purchased.

Q. Is that the prevailing practice?

A. I would not say prevailing, no.

Q. I mean in the majority of cases?

A. No, not in the majority, only very few.

Q. You mean only very few may give discount beyond the regular trade discount regardless of the quantity purchased?

A. That I don't know anything about.

Q. Maybe I am confusing the terms. The regular discount everybody gets is the cash discount and the other is what you call the trade discount?

A. Yes.

[fol. 273] Q. Then you say it is the exception rather than the rule for manufacturers to give any trade discounts in excess of the usual cash discount?

A. That is right.

Mr. Dolierty: That is all.

Cross-examination.

By Mr. Orfield:

Q. You have stated with reference to a number of phases of business, you make suggestions to the stores?

A. Yes.

Q. Have you any power to enforce those suggestions?

A. No.

Q. It is true, to a very considerable extent, the suggestions are not followed?

A. No, I would not say that.

Q. You think in most cases they follow your suggestions?

A. Yes, in the majority of cases.

Q. Is it true that the individual stores buy from you as individual stores and not as a unit?

A. Absolutely.

Q. And it would be true they buy in comparatively small quantities?

A. Yes, that is right.

Q. Do you render any financial assistance to your stores to enable them to open and finance themselves?

A. No.

Q. Would it be possible for you to give better prices in [fol. 274] case the purchase came in larger amounts from the stores in your system?

Mr. Doherty: Just a minute.

Q. In other words, is there a difference in the price you give according to the amount of the sale?

A. No, we have one price only.

Q. What is the amount of your cash discount?

A. That we allow the retailer?

Q. Yes.

A. 2%.

Mr. Orfield: That is all.

Redirect examination.

By Mr. Doherty:

Q. The individual retailer, could if he wished, in all cases purchase all his requirements of the merchandise handled by the Twin City Wholesale Grocer Company, through the Twin City Wholesale Grocer Company?

A. Yes, sure.

Q. I mean that privilege is available if they wanted to avail themselves of it?

A. Yes.

Q. Is the Twin City Wholesale Grocer Company operated on a profit basis or merely on a self-sustaining basis? Does it aim to make money for the distribution of stockholders or simply to serve the stockholders on a self-sustaining basis?

A. That is a point that requires considerable explanation because of the things involved. Briefly my answer would be that we charge the retailer what we consider a safe margin over and above our cost to take care of the

[fol. 275] operating cost. If at the end of the year there is any surplus, it is returned to them in proportion to the profits on the merchandise they have purchased and if there is a shortage, they are required to pay back the amount.

Q. In fixing your charges, you don't aim to produce a surplus?

A. Not for the Twin City Wholesale Grocer Company.

Q. You simply make a charge to take care of the operating expense?

A. That is all.

Mr. Doherty: That is all.

Recess for fifteen minutes.

Harry Martin, sworn on behalf of plaintiffs, testified.

Examined by Mr. Doherty:

Q. You are also here under subpoena?

A. Yes.

Q. Where do you live?

A. Minneapolis.

Q. What is your business?

A. Manager of the Minneapolis Allied Grocers, Incorporated.

Q. Tell us the general nature of that organization.

A. We term it a retail, co-operative, warehouse distributing concern.

Q. That corporation is owned by retail operators?

[fol. 276] A. Individual retailers.

Q. What territory do these retail stores extend over?

A. Minnesota and a couple in Dakota.

Q. How many in Minnesota?

A. 96.

Q. Distributed generally over the state?

A. About 65 in the Twin Cities, the balance over the state.

Q. What are the major activities of the corporation?

A. The buying and warehousing and distributing of merchandise.

Q. For its individual members?

A. Only to the individual retailers.

Q. It doesn't sell to others?

A. No.

Q. Does it render any other service except the purchase and sale to its members of merchandise?

A. We do help with the advertising and we have a department that helps with the collection of overdue accounts.

Q. Do you have any supervisory service?

A. No.

Q. Or advisory service furnished to the retail stores by the organization?

A. No.

Q. It is confined to purchasing and selling, advertising and assistance in collections?

A. Yes.

Q. Do you have anything in the nature of standardization of store arrangement?

[fol. 277] A. No.

Q. Or insignia?

A. We have an insignia, decalcomania sign.

Q. What is that?

A. A sign that can be transferred on a window or front of the door.

Q. And what is the nature of the sign?

A. "Allied Groceries."

Q. Do you have just one?

A. He may have as many as he desires and it is not obligatory.

Q. Do they all use it?

A. The majority in Minneapolis do.

Q. Any painting, color scheme on the store fronts?

A. No.

Q. That is the only identifying mark on the store fronts?

A. Yes.

Q. Is the corporation owned exclusively by the owners of these individual retail stores?

A. Yes, and operated for their benefit.

Q. And is it intended or aimed to be operated on a self-sustaining or profit basis?

A. Self-sustaining.

Q. Are the individual stores required by any contract to purchase from the wholesaler?

A. There is no contract.

Q. By virtue of their membership, are they under obligation to buy any proportion of their requirements?

A. No, that is optional.

[fol. 278] Q. Can you tell us what proportion of their requirements they do buy from the wholesaler?

A. I cannot tell you exactly. We get very good support and a big part of their business.

Q. Of what?

A. Staples, dry commodities and we do handle fruits and vegetables.

Q. As well as staple groceries?

A. Yes.

Q. And is a large percent of the fruits and vegetables purchased as well as the staple groceries?

A. A pretty good percent of them, but I cannot give the percent, because I don't know the aggregate purchase of the retailers.

Q. Would you say it would be safe to say 50% or more?

A. I cannot say.

Q. What is the aggregate volume of sales from the wholesaler to the individual members in 1935 approximately?

A. Our sales to our retailers were $1,400,000 in 1935.

Q. Have you any figures on the aggregate volume of sales to the retailer combined?

A. I do not.

Q. So the retailers are privileged to buy all their requirements from their wholesaler if they so desire?

A. Yes.

Q. The wholesaler in turn buys from whom?

A. Producers and manufacturers.

Q. And distributes to the members on a cost basis plus operating expense?

[fol. 279] A. Yes.

Q. You sell on a cash discount basis to your members?

A. We sell on a weekly basis, charging a penalty if the retailer does not pay each week on the specified day.

Q. You make your own purchases I presume on a cash discount basis?

A. Yes.

Q. Do you obtain any trade discount in addition to the cash discount for volume?

A. Whatever practice and terms are used by various manufacturers and producers. We endeavor to buy the best we know how.

Q. Is there a trade discount available for volume purchases?

A. If it is a practice of the producers and manufacturers.

Q. But is it not common practice to have the trade discounts?

A. I believe the majority of manufacturers price their merchandise on the net basis less the cash discount.

Q. Does the Allied Grocers, Inc. have any national hookup?

A. We are a part of the National Retail Owner Grocers, Inc.

Q. Is that a national organization?

A. Yes.

Q. And it operates generally throughout the United States?

A. Yes.

[fol. 280] Q. What is the nature of the connection between your organization and the national organization?

A. In the ownership?

Q. Whatever it is?

A. The National Organization issues stock membership to each warehouse distributing unit, based on one share of stock for each individual retail member of such warehouse unit.

Q. Then is the National Orangization an association of the wholesalers units?

A. We term it warehouse distributing units.

Q. That is, it is an organization of corporations?

A. Yes.

Q. Now then, in respect to purchasing staple stock, is that made by individual wholesalers or individual wholesalers combine their purchases from the factories?

A. Through the National?

Q. Yes.

A. It is optional with the warehouse unit whether they desire to purchase through the National or through some manufacturer.

Q. What is the general practice?

A. I would say through the manufacturers direct.

Q. Rather than through the central organization?

A. Yes.

Q. Do you do both?

A. We purchase mostly direct.

[fol. 281] Q. Do you find there is any advantage in purchasing through the National headquarters?

A. I might not be getting your questions right. The majority of purchases made by the Minneapolis Allied Grocers, Inc. are direct from the manufacturers.

Q. And some of it is, as I understand, through the National healquarters?

A. National Retail Owned Grocers, Inc.

Q. Then the question was whether the experience has been that there has been any advantage in buying from the National as distinguished from direct buying from factories?

A. They are both competitive. All manufacturers do not make a tie-up through the National organization.

Q. I suppose the volume purchased through the National headquarters would be greater than that of any individual wholesaler. Would you think that would be true?

A. No.

Q. Of course if all the wholesalers combined to buy through the National headquarters, then the volume would be correspondingly larger than if each wholesaler bought individually from factories?

A. Yes.

Mr. Doherty: That is all.

Cross-examination.

By Mr. Orfield:

Q. You spoke about rendering assistance in making col- [fol. 282] lections. Is that a service which you have carried on quite extensively? Do you render assistance to most of your members?

A. All those who seek it. We make it optional with the retailer if he so desires.

Q. Would you know anything as to the amount of money involved in these collections for the year 1935?

A. I cannot say exactly. I believe the percent would be—about $75,000 of over-due accounts were turned into the department and about $25,000 were collected during the year.

Q. Can you give me an estimate of the proportionate amount of slow accounts turned over to you?

A. No, I cannot.

Q. Do you think it was as much as 10%?

A. I couldn't say.

Q. Am I correct in understanding your organization operates on the co-operative system?

A. Yes.

Q. Have you any information to show what percentage of the business of your various units is credit business?

A. I don't have the figures, no. I could only make an estimate.

Q. Will you make an estimate?

A. I would say some 50 to 60%.

Q. Would you be able to make an estimate of the percent of loss on credit business?

A. In all of the stores, no.

Q. Would you for any limited number of stores or any particular store?

[fol. 283] A. It might vary in certain stores, up to one and one-half percent of the one percent of sales.

Mr. Orfield: That is all.

Redirect examination.

By Mr. Doherty:

Q. Is the allied corporation a Minnesota corporation?

A. Yes.

Q. Do you have salesmen? Does the wholesale organization have salesmen who visit the retailers to take orders?

A. No.

Q. You simply let them come to you if they want your goods?

A. Yes, we assign certain men of our employes to take care of certain groups of stores. In other words I have three men who handle it.

Q. But they don't go out soliciting orders?

A. No, they don't go out of the warehouse.

Mr. Doherty: That is all.

James Socum, sworn on behalf of plaintiffs, testified.

Examined by Mr. Doherty:

Q. You were subpoenaed here?

A. Yes.

Q. You live where?

A. Minneapolis.

Q. What is your business?

A. In the wholesale grocery business.

Q. With what company?

[fol. 284] A. Slocum, Bergren & Wash Company.

Q. Is that company affiliated with a group of retail stores in some fashion?

A. Yes.

Q. What is the name given to the group?

A. Red and White stores.

Q. In what territory?

A. They operate in the southern half of Minnesota. Some are warehoused in Minneapolis and in other parts of other states nearby.

Q. Is the rest of Minnesota served by another unit of the same organization?

A. Yes.

Q. Where?

A. Duluth.

Q. And the name of the company?

A. Stone, Ordeen & Wells Company.

Q. And are these companies affiliated with a national association?

A. Yes.

Q. What is the name of the national association?

A. Red and White Corporation.

Q. Just tell us briefly the nature of the activities of the wholesalers in relation to these retail stores. What is the method of operation?

A. We furnish them with a label of the merchandise which they sell in their stores and bill it to them on a basis of there being a customer of ours, if they sell that particular brand as their brand of food products.

Q. The wholesaler in this case is or is not owned by the retailers?

[fol. 285] A. He is not owned by the retailers.

Q. This is what we refer to as a wholesaler-retailer co-operative chain?

A. It is commonly known as a volunteer as compared to a retailer owned.

Q. How many retail stores have you in Minnesota?

A. About 175.

Q. Does that include Duluth and Southern Minnesota?

A. No.

Q. Those are the tributaries of your company here?

A. Yes.

Q. Do you know how many in the other group?

A. No.

Q. Do the stores do business generally all over the state, I mean the Red and White including the Duluth group?

A. Yes.

Q. Would you say there are probably as many in the northern part of the state as in your southern group?

A. I don't know.

Q. What is the essential difference in the relation between the Slocum, Bergren & Wash Company and the Red and White stores in the southern part of the state in its particular territory and the ordinary wholesaler and retailer it does business with?

A. I think the essential difference is we have a brand of merchandise which they like to sell and simply purchase [fol. 286] it from us, as compared to a competitive wholesaler and having a more or less competitive line of foods under those brands, they simply buy that brand from us as they might buy a different brand from a different supply house.

Q. How many items are covered by your Red and White brand?

A. Roughly 200.

Q. Does your company furnish any service to the Red and White stores in its territory?

A. Yes.

Q. What is the nature of the service?

A. We call it a field service. We have men who call on the stores occasionally and see if there is any way in which they can help in making the store more attractive or efficient.

Q. And render any assistance in the general operation of the store?

A. Yes.

Q. Do you have any store identification?

A. Yes.

Q. What is it?

A. It consists of a sign across the front of the building and a glass sign which is attached to the windows, providing the member wants the glass sign.

Q. Any general paint scheme?

A. Most of them are red, depending on the structure of the building, some cannot have anything done.

Q. Do you aim to bring about any standardization of store arrangement in the interior?

[fol. 287] A. Wherever it will be to the advantage of the store to do so, yes.

Q. You have specialists in that line of work who render assistance to the retailers?

A. They are men who have grown up in our business and have been acquainted with it most of their lives and give them advice.

Q. They have certain plans they try to put into effect?

A. No definite plan of interior arrangement, it depends entirely on the individual store.

Q. Isn't there some effort at uniformity as far as it is practical to produce it?

A. Only that the shelving should not be too high for the customer to reach it. That is the only request.

Q. Are the Red and White stores cash and carry stores?

A. Not necessarily.

Q. That is optional with the storekeeper?

A. Yes.

Q. And is the matter of extending credit optional?

A. Yes.

Q. Do you know what the prevailing practice is among the Red and White stores in your territory?

A. I would say most of them are extending credit, I would say about 75%.

Q. And as to delivery?

A. That I cannot answer.

Q. Is there any agreement or contract between the Slocum, [fol. 288] Bergren & Wash Company and the stores in its territory which requires the individual stores to purchase through the Slocum, Bergren Company in any particular quantity?

A. No.

Q. Or in any quantity at all?

A. No.

Q. Does the Slocum, Bergren Company render this service regardless of whether the store does business with it or not?

A. No.

Q. Then irrespective of any obligation on the part of the

Red and White stores, do you continue your service on the store if it buys a certain percent of its goods from you?

A. If the store owner indicates his desire to do business with us, we afford him the same service whether he buys a very small quantity or a very large quantity.

Q. But you would not continue to render such service if he did not continue buying from you?

A. Yes.

Q. But your company would not continue the service very long if the store did not continue to buy from you?

A. If he expressed no sincere desire to work with us, I would say no.

Q. And I suppose his not buying any merchandise from you would be evidence of it?

A. Yes.

Q. What connection is there with the wholesalers throughout the country?

[fol. 289] A. We are all affiliated with the Red and White corporation.

Q. In what way?

A. We each own one share of stock. The wholesaler owns one share of Red and White stock in the corporation.

Q. Is the Red and White corporation owned entirely by the group of affiliated wholesalers?

A. Yes.

Q. So they run and manage and control it?

A. Yes.

Q. How is most of the purchasing done, through the Red and White National Corporation or mostly by the individual wholesalers independent of the National organization?

A. Most of it is done by the individual wholesalers through their own buyers.

Q. Some of it is done through the National organization?

A. If it is necessary in some cases.

Q. The National has a buying agency?

A. Yes.

Q. You buy I suppose on a cash discount basis?

A. Yes.

Q. And sell to your members on the same basis?

A. Yes.

Q. How about the question of trade discount in excess of ordinary cash discount? Do you obtain any such discounts?

A. Yes.

Q. Does that depend on the volume of purchases?

[fol. 290] A. No.

Q. On what does it depend?

A. Standard trade discounts that are allowed by certain manufacturers to all buyers.

Q. Those are additional to the usual cash discount?

A. Yes.

Q. Do they depend at all on volume?

A. Not that I know of.

Q. Is there any joint advertising done by the Red and White stores?

A. Yes.

Q. By whom is that managed, the wholesaler or otherwise?

A. By both wholesaler and retailers.

Q. What does the wholesaler do?

A. He handles the details of writing out the advertising and the mechanics of getting it together and the placing of it in various advertising mediums.

Q. Do you do both newspaper and other form of advertising?

A. Yes.

Q. Hand-bills?

A. Yes.

Q. Display cards?

A. No display cards.

Q. To what extent is the newspaper advertising handled by the wholesaler?

A. I just answered that question in saying that the wholesaler handles the mechanics of having the advertising prop-
[fol. 291] erty set up and laid out. He renders the service to the retailers in that respect.

Q. Does that apply to all advertising for the Red and White stores?

A. Except for the country stores who do not take advantage of it.

Q. For these various services rendered by the wholesaler to the individual retailers, does it make any charge?

A. No.

Q. That service is rendered to cultivate the good-will of the retailers?

A. Yes.

Q. Does it enter into the price you charge the retailer for goods?

A. It does through our mark-up.

Q. This mark-up is intended to absorb the expense of that service?

A. Yes.

Q. But not to make any profit on it?

A. No.

Q. How are goods usually distributed from the warehouse to the retailers?

A. By trucks and railroad transportation at country points.

Q. Trucks supplied by the wholesaler?

A. Yes, trucks supplied by the wholesaler in the city on a leased basis, but in the country, the individual supplies his own truck or advises us how he wants it shipped and pays the freight on it from the Minneapolis warehouse.

Q. How is the truck service charged to the retailer in the city?

[Vol. 202] A. Through our mark-up in the cost of operation.

Q. To enter into the price of the goods?

A. Yes.

Q. There is no extra charge for delivery?

A. No.

Q. That is a delivered price?

A. Yes.

Q. Is there any advertising done on the national scope of the Red and White stores?

A. Yes.

Q. That is handled by whom?

A. The Red and White office in Chicago.

Q. That is the headquarters of the Red and White Corporation?

A. Yes.

Q. Does the Red and White National Corporation render any other service to the wholesaler?

A. Please repeat that.

Q. Does the National Red and White Corporation render any service to the wholesalers?

A. Yes.

Q. What?

A. In the nature of supplying them with merchandising ideas, that they may in turn pass along to the retailers and primarily the producing of labels and maintaining of labeled stock; so they will have the source of supply whenever needed in the purchase of our merchandise.

Q. Does the National Organization maintain some sort of a group who make a study of retail merchandising?

[fol. 293] A. Yes, to a limited degree as far as they can go in it, I mean there is a very limited amount of work done on it.

Q. Does the National furnish any service direct to the wholesalers?

A. Yes, bulletin service.

Q. And what is the nature of that?

A. Merchandise help and suggestions.

Q. Is there any other service furnished by the National to the wholesalers which we have not mentioned?

A. Yes.

Q. What would that be?

A. Service brought up by the other witnesses, such as helping them with accounting if they ask for it.

Q. You have men connected with Slocum Bergren Company who give such assistance?

A. Our field men do that as part of their regular work.

Q. What is the other work of the field men?

A. General helpfulness in any way he finds he can be on his visits around.

Q. How many field men do you have covering the territory?

A. Three.

Q. Is there any other service furnished by the National Organization that I have not referred to?

A. No.

Mr. Doherty: That is all.

[fol. 294] Cross-examination.

By Mr. Orfield:

Q. Do you render any service to your affiliated units in connection with the collection of accounts?

A. Yes.

Q. Will you state what that service is?

A. Simply to help a retailer collect such accounts as he may have failed to collect on his own responsibility.

Q. Do you know what amount of accounts was turned over to you during 1934?

A. No accounts are turned over to us.

Q. It wasn't done that way?

A. No.

Q. Do you know the amount of accounts with reference to which you did render assistance?

A. No, I have no way of knowing that.

Q. Have you any information as to the losses by bad accounts?

A. No.

Q. Do I understand that the relation between you and your affiliated stores is entirely voluntary?

A. Yes.

Q. Do you know the speed of turn-over of the stores?

A. No, I do not.

Redirect examination.

By Mr. Doherty:

Q. Have you any figures Mr. Slocum on the total volume of business done by all the wholesalers in your group over the country?

[fol. 295] A. No, I have not.

Q. Or on the retailers?

A. No.

Q. I don't understand what the nature of the assistance rendered in connection with the collection of the accounts is.

A. It is finding out by going over his accounts with him, those which are delinquent and pointing out to him those delinquent accounts will turn out to be losses if he does not do something about it, or if they have already turned out to appear as a loss, we make some attempt to contact the customer who made the purchase to see if there isn't some way that it can be remedied, or we may recommend they be turned over to a collection agency.

Q. Do you know of any volunteer or co-operative chains operating in Minnesota which have not been mentioned. Mr. Harrison enumerated a list. Is there any you know of that he didn't name?

A. Yes, there is one.

Q. What is that?

A. The United Grocers.

Q. Of what type is that?

A. Volunteer.

Q. And where is its headquarters?

A. Hancock Nelson Mercantile Company of St. Paul.

Q. That is a case where the retailers own the wholesaler?

A. No, it is where the retailer works with the wholesaler, but does not own any stock as far as I know in the wholesalers' business.

[fol. 296] Q. But it is the same general type of organization as yours?

A. Yes.

Mr. Doherty: That is all.

Recross-examination.

By Mr. Orfield:

Q. Does your organization render any financial assistance to the individual stores?

A. No.

Mr. Orfield: That is all.

Frank Stiegler, sworn on behalf of plaintiffs, testified.

Examined by Mr. Doherty:

Q. Where do you live?

A. Duluth.

Q. What is your business?

A. District Supervisor for the National Tea for that territory.

Q. What territory?

A. Duluth district.

Q. What is included in that district?

A. Eveleth, Hibbing, Virginia, Grand Rapids; International Falls, Two Harbors, Cloquet and Carlton and two stores in Superior.

Q. Is there any difference in the nature of your duties as supervisor than those described by the two other supervisors who testified before you?

A. It is the same thing.

Q. Are you familiar with the competition situation with reference to where your stores are operating?

[fol. 297] A. Yes.

Q. What is the fact as to whether or not all your stores have competition?

A. They all have.

Q. And competition from what class of organization generally speaking?

A. It is the chain store, volunteer, co-operative, independent.

Q. Take Hibbing first. Are you sufficiently familiar with the other competitive stores in these various locations and with the business they do so you can make a fairly accurate estimate of the comparative volume of business done by your competitors?

A. I can.

Q. Then will you give us the list of stores in Hibbing arranged in the order of the volume of business done, including the National Tea and tell us whether they are one or more store owners?

A. First comes the Consumers Co-operative Store which is affiliated with the co-operative store in Wisconsin.

Q. How many stores have they in Minnesota?

A. They operate something over 100 stores out of their central store in Wisconsin altogether, how many are in Minnesota, I could not say.

Q. Do you know whether there is more than one?

A. Yes, of course it is called a different co-operative, but they operate two stores in Cloquet, one at Erskine, one at Virginia and Two Harbors, but I understand out of that central warehouse they operate 100 stores.

[fol. 298] Q. Have you sufficient knowledge of the nature of the set-up of this organization to tell us about it?

A. I understand that they buy their merchandise from the central headquarters and the customers when they purchase from these co-operative stores, automatically will as soon as they purchase enough to entitle them to a membership, share in the profits of that store.

Q. Is it your understanding there is any common ownership between the stores or are they separately owned?

A. They are separately owned, that is they have different members that buy from that particular store.

Q. The headquarters is in Wisconsin?

A. Yes. The Central Co-operative is in Superior, Wisconsin.

Q. What is the next store in order of volume?

A. The next store is the Daylight and City Market. The City Market owns the Daylight and they have two stores at

Hibbing. When you put these stores second, the two stores together do more than ours do.

Q. But neither one singly would not?

A. No. The National Tea is third, Red Owl fourth and Piggly Wiggly is fifth.

Q. Is Piggly Wiggly a chain store.

A. Yes and Gergohgoes have a store at Hibbing, but it is a chain of ten stores. The City Market has a chain of ten stores too. Then comes Buehler Bros.

[fol. 299] Q. Is that a chain?

A. Yes, a national chain.

Q. Does it operate nationally under that name?

A. Yes.

Q. Have you any information as to the scope of its operations?

A. I know they have a store in St. Paul, Duluth and Kansas City, so they must have them all over the country. Eighth is a City Grocery, which has three stores, one in Hibbing, one in Eveleth, one in Chisholm.

Q. That is all the competition you know of in Hibbing?

A. Yes.

Q All right, take Virginia in the same manner.

A. In Virginia the International Working Peoples Co-operative. They are affiliated with the co-operative system in Wisconsin. Next comes Gergohgoes, then the City Market, then Red Owl, Piggly Wiggly, Buehler Bros. and then National Tea.

Q. Take Two Harbors next.

A. First comes the Scandinavian Co-operative System. They are affiliated with the Wisconsin organization and then comes Pruents, who have three stores in Two Harbors, then the Farmers and Workers Co-operative.

Q. What is that?

A. That is owned by the farmers and workers, they have only one store and then the National Tea and then Hines Economy Market. He claims to be an independent but buys all his merchandise from the Gergohgoes Market.

[fol. 300] Q. Does the man who owns Hines Economy own any other stores?

A. No.

Adjourn until 10 A. M. Friday.

Q. Mr. Stiegler, will you turn to Cloquet and give us the list of competitive stores and put the National Tea in the order of its size measured by gross sales?

A. We have two co-operatives and they are called the Cloquet Society.

Q. Is that an independent?

A. They requisition everything out of their headquarters at Superior, Wisconsin.

Q. They are connected with the same Wisconsin Co-operative you talked about before?

A. Yes.

Q. In placing them first, are you combining the sales of the two stores or each store separately?

A. I am combining the two. The one store they claim did half a million dollars worth of business last year.

Q. How would the one store considered by itself be compared?

A. There would be no comparison, it would still be on the top of the list. Then the City Market, a chain of ten stores, then the Community Market, a chain of three stores and then the National Tea.

Q. Do these various co-operative stores you have spoken of as being allied with the Wisconsin headquarters, do business with the general public?

A. Yes.

Q. It has no restricted membership to which it confines its sales?

[fol. 301] A. That is right.

Q. Did you give us the name of the general organization? Under what name does the Wisconsin headquarters operate?

A. It is just the Co-operative System.

Q. Is it the Central Co-operative System?

A. Yes, that is right.

Q. Now take Duluth, what is the general situation in Duluth? Generally speaking what is the competitive situation in Duluth?

A. We have the City Market, Gorgohgoes Market, Piggly Wiggly, Community Market, the Fairway, I. G. A. and then our own store.

Q. What would the fact be at any particular location in Duluth where you might pick out your store, whether you have competition with one or more other stores?

A. We do.

Q. And would you generally have competition with more than one?

A. Yes.

Q. On the average what competition would you have at these various locations in Duluth?

A. In most of the places we have City Market and in other places, Piggly Wiggly and Gergohgoes Market.

Q. Are those the most frequent competitors?

A. Yes.

Q. Do you have any general competition with stores located in the business center of Duluth?

A. Woolworth and Kresge handle some of our merchandise.

[fol. 302] Q. Do all these stores you have referred to as being competitors of the National Tea deal in the same line of groceries and meats?

A. Yes.

Q. And is the National Tea subjected to direct competition with all in the various locations you have mentioned?

A. Yes.

Mr. Doherty: That is all.

Cross-examination.

By Mr. Orfield:

Q. With reference to Hibbing, you said the Consumers Co-operative Store was the leading one. Do you know whether that is organized under the laws of Minnesota?

A. I don't know.

Q. It does business on a co-operative basis?

A. Yes.

Q. Does it give credit?

A. Yes.

Q. Does it make deliveries?

A. Yes.

Q. You stated your other competitors in order are the Daylight, City Market, yourself third, Red Owl, fourth, Piggly Wiggly fifth, Gergohgoes sixth Buehler Bros. seventh and City Grocery eighth. Is it true that seven of these eight stores are chain stores?

A. Yes.

Q. Are there other smaller stores in Hibbing?

A. Yes, there are.

[fol. 303] Q. Are they mostly chain stores or independents?

A. They are mostly independents.

Q. With reference to the city of Virginia, you stated that the leading store is the International Working Peoples Co-operative. Is that a co-operative?

A. Yes.

Q. Does that store deliver and give credit?

A. Yes.

Q. You stated that the other leading stores in Virginia in order of size are Gergohgoes, City Market, Red Owl, Piggly Wiggly, Buehler Bros. and National Tea. Is it correct to say six of these leading stores are chain stores?

A. Yes.

Q. Are there other competing stores in the same line of business in Virginia?

A. Yes.

Q. Generally speaking are these other stores chains or independents?

A. They are independents and volunteers.

Q. You stated with reference to the City of Two Harbors, that the Scandinavian Co-operative System is the leading store. Is that a co-operative?

A. Yes.

Q. Does that store deliver and give credit?

A. Yes.

Q. You stated I believe that Pruents is the second leading store. Is that a chain store?

A. Yes, they have three stores in Two Harbors.

Q. You stated that the third leading store is the Farmers and Workers Co-operative?

[fol. 304] A. Yes.

Q. Is that a co-operative?

A. Yes.

Q. Does that store give credit and deliver?

A. Yes.

Q. With reference to Cloquet, you stated that the Cloquet Co-operative is the leading store?

A. Yes.

Q. Is that a co-operative?

A. Yes.

Q. Does it give credit and deliver?

A. Yes.

Q. You stated that the other leading stores in Cloquet in order of size are the City Market, Community Market and National Tea. These three are all chain stores?

A. Yes.

Q. With reference to Duluth, you stated that at most of your locations your leading competitors are City Market, Piggly Wiggly and Gergohgoes Market. Are these three all chain stores?

A. Yes.

Q. Will you state with reference to the City of Duluth how the warehousing for your company is carried on, as to whether or not you have one central warehouse serving the city?

A. We do.

Q. Does that warehouse also serve other cities?

A. Yes.

Q. Will you state how your delivery service is conducted from that warehouse with reference to the question of whether one truck will go out from that warehouse and [fol. 305] make deliveries to a large number of your stores. Is that the method of delivery?

A. Part of it is.

Q. Is there economy in that method of delivery as compared with individual delivery?

A. I couldn't say.

Q. Wouldn't you think it would save money if one truck could deliver to 20 stores on one trip rather than delivering to one?

A. We don't always have one truck delivering.

Q. Don't you combine your deliveries as far as possible?

A. Yes.

Q. Are the purchases for your various stores made by cash?

A. I don't know.

Q. In advertising the wares of your Duluth store, do you advertise the various stores in one ad or does each store advertise individually?

A. One ad, that is only for Duluth.

Q. Is there economy in that system of advertising as compared to individual ads for each store?

A. I presume.

Q. Do you know what is the rapidity of turnover of the stores under your supervision?

A. No.

Q. Do you know approximately?

A. No.

Q. Do you have anything to do with the supervision of the system of display of the stores you manage?

A. Yes.

[fol. 306] Q. Have you uniform or fairly uniform policy with reference to that system of display?

A. As much as possible.

Q. What is the advantage of a uniform system of display?

A. To make the stores look uniform.

Q. What is the advantage of having the stores look uniform?

A. It is the policy of the company.

Q. Yes it is the policy of the company, but there must be a reason behind the policy. Have you an opinion what that reason is?

A. Not unless it is to move merchandise.

Q. Is it the policy of the company to own or rent the stores under your supervision?

A. We rent all except one.

Q. What is the reason why you rent almost all of your stores rather than owning them?

A. I couldn't say.

Q. How long have you been in charge of this district?

A. It will be a year in June.

Q. During that period, have you closed any stores?

A. Only one.

Q. Why did you close that store?

A. Somebody else rented the building.

Q. Do your stores in buying, receive additional discounts when they buy in carload lots?

A. I do not know.

Q. Is it part of your sales policy to maintain what I believe is called 'loss leaders?'

[fol. 307] A. I don't know.

Q. Do you offer some goods for sale in any of your stores at less than they cost?

A. I don't know.

Q. Do you know where the money taken in by your various stores is banked?

A. Yes, sir.

Q. Is it banked in the local bank?

A. Yes.

Q. Is some of it sent to the central office of the company for banking?

A. No, sir.

Q. Have you added to the number of stores within the district within your supervision while you have been in charge?

A. One store.

Q. Do the stores under your supervision extend credit?

A. Not unless authorized by the company.

Q. Are they authorized by the company to extend credit to any considerable extent?

A. No, sir.

Q. Would it be your estimate that they do as a matter of fact extend credit to the extent of as much as 2% of their total receipts?

A. No.

Q. Do your stores make deliveries of goods?

A. In very few instances.

Mr. Orfield: That is all.

Redirect examination.

By Mr. Doherty:

Q. You spoke of Consumers Co-Operative and Interna- [fol. 308] tional Working Peoples Co-operative as being co-operative stores. What do you mean by co-operative as applied to those stores?

A. Co-operative is the public shares in the profits of that store.

Q. You don't mean the public regardless of whether or not they patronize the store?

A. Yes.

Q. The store is open to the general public?

A. Yes.

Q. Anybody can buy who wants to?

A. Yes.

Q. Have you any knowledge when any particular person becomes entitled to participate in the profits of the store? Does every customer who makes a purchase of any quantity receive a dividend or is he entitled to participate in the profits of the store?

A. Automatically when you make a purchase, that is applied to your membership.

Q. You have to buy a certain amount in order to become a member and then you participate in the profits?

A. Yes. After the purchases of any particular customer represents a certain level, then he becomes entitled to patronage dividends.

Q. In case the store makes a profit at the end of the year?

A. Yes.

Q. And if his purchases do not represent that level, he is on no different basis than any other customer of any other store?

[fol. 309] A. That is right.

Q. Do you know what the minimum amount of purchases a customer must make in order to obtain patronage dividends?

A. The membership is $5.00.

Q. What does that mean?

A. You can purchase a membership and then start benefitting or receiving dividends, that is, if the store makes a profit.

Q. You can purchase a membership for cash regardless of the patronage of the store?

A. Yes.

Q. And those memberships cost $5.00?

A. Yes.

Q. Then the patronage dividend of the man who bought a membership of $5.00 would be based on the earnings of the store?

A. Yes, but he cannot take that $5.00 out when he wants to, unless they want to refund him.

Q. Take the case of a man who does not buy a membership, but gains one through patronage, how much must his purchases amount to before he is a member?

A. It depends on the earnings, it must be up to $5.00. If they declared a 5% dividend, he would have to make $100 worth of purchases.

Q. If the total purchases equaled $100 and a 5% dividend was declared on the basis of the purchases, then he would be entitled to $5.00 in dividends and that would purchase him a membership?

A. Yes.

Q. If the dividend was 2½%, he would have to have $200 worth of purchases?

[fol. 310] A. Yes.

Q. In respect to the Scandinavian Co-Operative at Two Harbors and the Farmers and Workers Co-Operative, do you understand they are co-operatives of that kind?

A. The Scandinavian Co-operative is.

Q. Of that same type?

A. They get their supplies from the Central Co-operative.

Q. And how about the Farmers and Workers?

A. I am not sure about that, but I understand it is a stock company; so many farmers went in and organized the corporation, bought so much stock in it.

Q. So it is simply an ordinary stock ownership corporation and does business with the general public?

A. Yes.

Q. Without any patronage dividends?

A. I am not sure.

Q. How about the Cloquet Co-operative?

A. The same as the others, where the customer benefits by the purchases.

Q. Where they have patronage dividends?

A. Yes.

Q. And that is affiliated with the Central co-operative?

A. Yes, it is.

Mr. Doherty: That is all.

[fol. 311] Richard J. Leonard, sworn on behalf of Plaintiffs, testified:

Examined.

By Mr. Doherty:

Q. Mr. Leonard, you are a lawyer?

A. Yes.

Q. Associated with our office?

A. Yes.

Q. I will show you Plaintiffs' Exhibit I and ask you if you prepared that?

A. I did.

Q. What is it?

A. Analysis of tax payments under the Minnesota chain store tax act. It is a compilation showing the number of cor-

porations, individuals, partnerships, trustees and other organizations filing returns and showing the number of stores in each chain and the number of chains filing in 1933, 1934 and 1935.

Q. From what was it prepared?

A. It was taken from the records of the Tax Commission, which I believe is now Plaintiff's Exhibit A.

Q. Or a duplicate photostatic copy of Exhibit A?

A. Yes.

Q. Is it taken from anything else?

A. No, sir.

Q. Everything you have on here is a summary or compilation from Exhibit A?

A. Yes.

Mr. Doherty: Offer in evidence Plaintiffs' Exhibit I as a summary for the convenience of the Court.

[fol. 312] The Court: Received.

Q. I show you Plaintiffs' Exhibit J and ask you if you prepared that?

A. I did.

Q. From what was it prepared?

A. From the records of the Tax Commission, a photostatic copy of which is Exhibit A.

Q. It was prepared entirely from that?

A. Yes.

Q. Showing what?

A. This shows the chains filing returns in 1934 classified according to total gross sales reported for that year.

Q. And is simply a summary of the information contained in Exhibit A on that subject?

A. Yes.

Mr. Doherty: Offer in evidence Plaintiffs' Exhibit J.

The Court: Received without objection.

Q. I show you Plaintiffs' Exhibit K and ask you if you prepared that?

A. I did.

Q. And what is it?

A. A compilation taken from a duplicate copy of Plaintiffs' Exhibit A, showing for the stores named on the statement, the specific tax paid by that store during 1934, sales tax paid for the same year, taxable gross sales, maximum gross sales tax rate, composite gross sales tax rate, per-

centage of gross sales in specific tax, then a total of the gross sales tax and specific tax and percentage of it as of the stores named?

[fol. 313] Q. Are the figures as to the amounts taken from Exhibit A?

A. Yes.

Q. The computations were made by you?

A. Yes.

Q. The particular companies shown on this list, how were they determined upon? Why are you showing this particular list of companies rather than all the companies on Exhibit A?

A. These companies are the ones that the three supervisors have just testified were in direct competition with their stores at various locations.

Q. And all the companies on this list except the National Tea are companies which were testified to as being in competition with them at their various locations?

A. Yes.

Mr. Doherty: Offer in evidence Plaintiffs' Exhibit K.

The Court: Received without objection.

Mr. Doherty: That is all.

Mr. Doherty: Offer in evidence from Exhibit B, table 2 on pages 11, 12 and 13,—"Operating expenses, by kinds of business." This pertains to Minnesota only. However, I offer the figures contained only on two of the columns in the table, being the column entitled, "Number of stores" and the column entitled, "Total operating expenses, per cent to total sales."

The Court: Received without objection.

Mr. Doherty: Exhibit L is a certified copy of a report of Federal Trade Commission of the United States to the [fol. 314] United States Senate on the subject of chain stores, sales, costs and profits of retail chains. From Exhibit L I wish to offer the certificate of the Secretary of Commerce, the first three paragraphs of the Letter of Submittal set out on page XI, and Table 3 on pages 10 and 11, showing for 26 kinds of chains, net sales, cost of merchandise sold, per cent, gross margin, percent, rank of gross margin, operating expense, per cent, rank of operating expense, net operating profit, per cent and rank of net operating profit.

The Court: Received without objection.

Mr. Doherty: Also offer in evidence Table 10 on page 28, showing percentages of gross margin to sales, by kind of chain, for specified years.

The Court: Received.

Mr. Doherty: Also offer in evidence Table 11 on page 28, showing percentages of operating expenses to sales, by kind of chain, for specified years.

The Court: Received.

Mr. Doherty: Also offer in evidence Table 12 on pages 30 and 31, showing percentages of net operating profit to sales, by kind of chain, for specified years.

The Court: Received.

Mr. Doherty: Also offer in evidence Table 32 on pages 54 and 55, showing percentages of net operating profit to sales, by kind and size of chain, all years combined.

The Court: Received.

Mr. Doherty: Also offer in evidence from Exhibit D, [fol. 315] page A-5, computation of operating expense, by kinds of business for the United States. I notice the last half of the table relates to California and only the first half to the United States. I offer only the first half down to and including the line entitled "With adjustments for small stores, 1933."

Mr. Doherty: Also offer in evidence from Exhibit L, page 78, Table 12, showing average net operating profit per store, by kind of chain, for specified years.

The Court: Received.

Mr. Doherty: Offer Table 28, page 49, of Exhibit L, showing average sales per store, by kind and size of chain, all years combined.

The Court: Received.

Mr. Doherty: Also offer in evidence from Exhibit D, page A-12, "United States Summary, 18 kinds of business by types of operation."

The Court: Received.

Mr. Doherty: Offer in evidence from Exhibit D on page A-56, a "Comparison of 39 principal kinds of business, 1933 and 1929, stores, sales, employees, pay roll and stocks," Table A, the first column entitled "kind of business," second column "Number of stores," third column under "sales,—amount—1933 and 1929."

The Court: Received.

Mr. Doherty: Exhibit M is a certified copy of the report of the United States Federal Trade Commission relative

to Co-operative Grocery Chain Stores. Offer in evidence certificate of Secretary of the Commission, the cover page [fol. 316] as explanatory of the contents of the exhibit and Table 2 on page 9.

The Court: Received.

Mr. Doherty: From the same exhibit we offer Table 3 on page 12, showing the number of specified types of co-operative grocery chains reporting and total and average number of stores reported in 1930.

The Court: Received.

Mr. Doherty: Also offer in evidence from Exhibit M on page 14, the portion of the page commencing with the caption, "Estimate of total number of retailers in co-operative grocery chains," to the end of the page, except the foot notes.

The Court: Received.

Mr. Doherty: Now offer Table 4 on page 15 showing the distribution of 319 co-operative grocery chains and of their retail member stores, by size groups, 1930.

The Court: Received.

Mr. Doherty: Also offer in evidence from the same Exhibit M, a portion of Table 5 which is a distribution by States of retail member stores of 319 co-operative grocery chains as classified by type of organization and function, 1930. Offer in evidence the figures as to the State of Minnesota given under each of the seven headings on page 16, also from Table 5 on page 17, the figure with reference to the State of Minnesota under each of the seven headings.

The Court: Received.

[fol. 317] Mr. Doherty: Offer in evidence from Exhibit M, Section 7, at the bottom of the page under the caption, "The Independent Grocers' Alliance of America," extending to and including all of pages 19, 20 and 21, except the foot notes on each page.

The Court: Received.

Mr. Doherty: Offer in evidence from Exhibit M, Section 8, being all of page 22 except the foot notes and pages 23 and 24 on the subject of the Red and White Corporation. I would like to include that portion of the foot note (38) on page 22, which specified as one of the companies, the Slocum Bergren Company of Minneapolis and Stone, Ordean-Wells Company (8 branches) Duluth.

The Court: Received.

Mr. Doherty: Plaintiff's Exhibit N is a certified copy of a report entitled "Fifteenth Census of the United States,

Census of Distribution, Retail Chains, 1929." Offer in evidence certificate of the Secretary of the Commission and on page — Table 3, entitled "Operating Expenses—Variety Store Chains." We offer all the table down to and including the line which reads "Per $100 of sales," and the figures opposite that heading.

The Court: Received.

Mr. Doherty: Offer in evidence page 86 of the same Exhibit, Table 4, entitled "Operating Expenses—Motor Vehicle Dealer Chains," all of the table down to and including the line beginning with—"Per $100 of sales," and including the figures set out in the table opposite those words.

[fol. 318] The Court: Received.

Mr. Doherty: Also offer in evidence on page 193, Table 11, entitled "Operating Expenses—Tire Chains," down to and including the words, "Per $100 of sales," and including the figures opposite the words on that line.

The Court: Received.

Mr. Doherty: Also offer in evidence page 127 of Exhibit N, Table 5-A, entitled "Operating Expenses Classified by Size of Chain—Men's Clothing Chains," down to and including the words "Per $100 of sales," and including the figures opposite the words on that line.

The Court: Received.

Mr. Doherty: Also offer in evidence on the same page, table 5-B, entitled "Operating Expenses Classified by Size of Chain—Men's Clothing and Furnishings Chains," down to and including the words "Per $100 of sales," and including the figures opposite the words on that line.

The Court: Received.

Mr. Doherty: Also offer in evidence page 128, Table 5-C, entitled "Operating Expenses Classified by Size of Chain—Men's Furnishing Chains," down to and including the line with the words "Per $100 of sales," and the figures opposite the words in that line.

The Court: Received.

Mr. Doherty: From the same exhibit we also offer on page 129, Table 5-E, entitled "Operating Expenses Classified by Size of Chains—Tailoring Chains," down to and including [fol. 319] the words "Per $100 of sales," and including the figures in that line opposite the words.

The Court: Received.

Mr. Doherty: We also offer in evidence from the same Exhibit page 155, Table 6, entitled "Operating Expenses

by Size of City—Shoe Chains," down to and including the words "Per $100 of sales," and the figures on that line opposite those words. From the same Exhibit, page 226, Table 6, entitled "Operating Expenses-Drug Store Chains" down to and including the words "Per $100 of sales," and the figures in that line opposite those words.

The Court: Received.

Mr. Doherty: On page 243, Table 3, entitled, "Operating Expenses—Jewelry Chains," down to and including the words "Per $100 of sales," and the figures opposite the words in that line.

The Court: Received.

Mr. Doherty: Also offer in evidence from the same Exhibit on page 251, Table 4, entitled "Operating Expenses—Hardware Chains," down to and including the words "Per $100 of sales," and the figures opposite the words on that line.

The Court: Received.

Mr. Doherty: Also offer in evidence from the same Exhibit on page 256, Table 17, entitled "Operating Expenses—Paint and Wall-Paper Chains," down to and including the words "Per $100 of sales," and the figures opposite the words on that line.

The Court: Received.

[fol. 320] Mr. Doherty: Also offer in evidence from Exhibit N, on page 266, Table 4, entitled "Operating Expenses—Office Appliance Chains," down to and including the words "Per $100 of sales," and the figures opposite those words on that line.

The Court: Received.

Stanley Roth, sworn on behalf of plaintiffs, testified:

Examined by Mr. Doherty:

Q. You reside here in St. Paul?

A. Yes.

Q. How long have you lived here?

A. Since approximately the first of May, 1934.

Q. What is your business?

A. Vice-President and Managing Director of the Golden Rule Department Store.

Q. And you have been in that position during the time you have just mentioned?

A. Yes.

Q. Prior to that time what was your business experience?

A. I was graduated from the University of Chicago in June, 1918, and at that time was in the service and after I was discharged from the army on approximately the 26th of December, 1918, I joined the Retail Research Association in New York City. The Retail Research Association is an organization of, at that time, 18, I believe today 20 of the large department stores of the United States who are engaged in the common purpose in connection with research [fol. 321] and study of their problems and the common service plan in regard to merchandising. I was in the research end of the work from the time I joined the Association until October 20, 1921. I spent that time making studies in all these stores on various operating problems and merchandising problems of the stores. On the 21st of October, 1921, I became Personnel Manager of L. S. Ayres & Company of Indianapolis, a member store of the association and served in that capacity for approximately four years and later became Divisional Merchandise Manager of approximately two-thirds of the departments in the main store. I left Ayres & Company to become Vice-President of Gimball Bros. and General Manager of the Milwaukee unit of Gimball Bros. from April 15, 1928, until August 1, 1933. On September 5, 1933, I became associated with the then Hahn Department Stores, which are now known as Allied Stores Corporation, and was in the New York office at the time as assistant to the President, as a consultant and remained in that capacity until I came to St. Paul as Vice-President and Managing Director of the Rule.

Q. Since the time you joined the Retail Research Association, have you been constantly engaged in the study of the general subject of retail distribution?

A. Yes.

Q. And particularly I presume in relation to your own kind of business?

A. Naturally, but it is necessary in our business to know about all forms of distribution.

[fol. 322] Q. Your business involves business in a great many different lines?

A. Yes.

Q. Can you tell us off-hand, how many departments you have in your store?

A. 107 different departments and we carry about 150,000 different items of merchandise.

Q. Every department carries a different line of merchandise?

A. There is some duplication between basement and upstairs as to the type, but it would be a different line and a different price line.

Q. Now the Golden Rule is a Minnesota corporation, is it not?

A. Yes.

Q. And the name of the corporation is the Golden Rule or the Golden Rule Corporation?

A. I believe it is the Golden Rule Department Store.

Q. How many stores do the Golden Rule operate?

A. One.

Q. And that is the store here in St. Paul?

A. Yes.

Q. By whom is the stock of the Golden Rule owned, the capital stock?

A. By Allied Stores Corporation.

Q. Are you familiar with the set-up of the Allied Stores Corporation and its relation to the other various stores, the stock of which they own?

A. I believe I am.

Q. The Allied Stores Corporation is interested in a group of how many stores?

[fol. 323] A. 33.

Q. In what states are they? How many different states?

A. I cannot tell you off-hand but could figure it out. We have two in Massachusetts, eleven in Pennsylvania, four in Ohio, two in Michigan, two in Minnesota, one in Washington, two in Texas, one in Louisiana, one in Florida, one in West Virginia, one in North Carolina, one in Maryland.

Q. If I show you a copy of an annual report, will that recall them to you?

A. Yes, three in Massachusetts, one in New Jersey, one in Iowa and one in Nebraska.

Q. Are all these stores general department stores?

A. No, not all of them.

Q. What are those that are not department stores?

A. Specialty stores. There is an Apparel specialty store in Cincinnati and the O'Neil Company Specialty Store. All the rest are general department stores.

Q. Are each of these stores owned by separate corporations?

A. Not all but practically all are.

The four Pomeroy stores in Pennsylvania are one corporation and I believe some of the six Trautman stores are incorporated together, but I couldn't be accurate about that.

Q. The two Minnesota stores are owned by separate corporations?

A. Yes.

[fol. 324] Q. The other store being the Donaldson Store in Minneapolis?

A. Yes.

Q. What is the name of that corporation?

A. The Donaldson Company.

Q. By whom is the stock of all these corporations operating these stores owned?

A. The stockholders of the stores are scattered from coast to coast.

Q. Let me confine you to the common stock, the voting stock?

A. The voting stock of the individual stores which are incorporated as such, is only owned by Allied Stores Corporation. The stock of Allied Stores Corporation is owned by the public.

Q. Then in Allied Stores Corporation has some preferred stock in the hands of the public also?

A. Yes.

Q. And the common stock of the Allied Stores Corporation, is that widely distributed?

A. Quite widely distributed.

Q. What class of people hold the most of the Allied Stores Corporation stock?

A. A large proportion is held by the individuals who formerly were the sole owners of these particular companies which were incorporated together as Hahn Department Stores. In a great many cases the former owners merely exchanged the entire ownership of their business to a partial ownership of a group of businesses and received Allied Stores Corporation stock for that.

[fol. 325] Q. The Golden Rule Corporation at the time it was organized by Allied Stores Corporation, was it paid for by Allied Stores Corporation in stock of the Allied Stores Corporation?

A. It was then Hahn Department Stores. Some of the payment was in terms of cash, a considerable amount was in Hahn Department Store stock. Mr. Dittenhofer and the Elsinger family were the principal owners, possess considerable quantities of Allied Stores Corporation stock which they received as payment for their business. Mr. Dittenhofer is the director of Allied Stores Corporation and represents a fairly considerable ownership interest.

Q. Do you know whether the Donaldson store in Minneapolis was organized in the same way?

A. I am not familiar with that as far as Donaldsons is concerned.

Q. Who are the officers of the Golden Rule?

A. S. W. Dittenhofer, President, I am Vice-President, W. J. Eiden, Secretary and Treasurer.

Q. Mr. Eiden is a St. Paul resident?

A. Yes.

Q. And the Comptroller of the Golden Rule?

A. Yes.

Q. By whom is the Rule actually operated?

A. By the local management.

Q. Principally the three officers you have mentioned?

A. We have the ultimate responsibility but have a lot of other people who do most of the work. They are responsible to us and we are the executive heads of the business.

[fol. 326] Q. Does the Allied Stores Corporation or its executives take any part in the actual operation of the store?

A. They do not. The management of the store is in the hands of the officers mentioned and it is up to us to run the store.

Q. Who does the buying for the store?

A. We have approximately 50 buyers who are residents of St. Paul who buy for and manage the departments. They do the buying for the store.

Q. Is there any part of that buying that is done through the Allied Stores Corporation?

A. There is a New York office which is known as the Allied Purchasing Corporation, which is a common central service office for all the stores. It performs a function for all the stores just as the Central New York office of the Retail Research Association or any other local or resident buying office would perform. That office purchases merchandise for us at our request only, just as any other New

York buying office would, just as the New York buying office of the Rule did before the Rule became associated with Hahn Department Stores.

Q. Is it the practice of all large department stores to have a buying office in New York?

A. Yes.

Q. Whether grouped with other stores or not?

A. Yes.

Q. And I assume the Rule had such an office before it was in alliance with the Allied Stores Corporation?

[fol. 327] A. Yes.

Q. What percentage of your purchases do you make through that agency?

A. As nearly as we could estimate, it runs about 3%. 97% of our purchases are made by the buyers themselves. of this 3%, a considerable portion is requests for sample orders and new styles in fashion or what we call 'open orders.' If we need grey coats at a certain price, we send an order for grey coats to sell at such and such a price and the office representatives being there for that purpose, go out and purchase those coats for us as they are requested to.

Q. Do the various stores whose capital stock is owned by Allied Stores Corporation do any joint advertising?

A. I don't know of any.

Q. You don't as far as the Golden Rule is concerned?

A. No.

Q. Is there any attempt at standardization among the various stores?

A. I should say rather the opposite.

Q. Each store determines for itself anything pertaining to store lay-out, display of stock and all that?

A. I think all managers feel that their principal object is to make their store fit in the community in which it is operating and since there are no two communities alike, we feel no two stores are to be compared. We want to mold the store to the requirements of the city in which it operates. [fol. 328] Any attempt at standardization would defeat that purpose.

Q. Does the Allied Stores Corporation furnish any sort of supervisory service to the various stores?

A. It does.

Q. What is the nature and extent of that?

A. I said we received a resident buying office service. That is not a consulting or advisory service, but in addition

to that, the stores have employed collectively, a certain number of individuals who were specialists in certain management problems. We have a man who specializes on credit practices, a man who specializes on control practices, a man who specializes on operating problems, another on personnel problems. We have two or three men engaged in research along merchandising lines. These men have as their function, a study of the particular problems in which field they are situated, a study of how each one approaches those problems and it is the object to facilitate the transfer of good practice from one store to another. Such organizations for research are established in several groups of stores, whether they happen to be independently or collectively owned. The type of work I mention now, the consultant service we obtain from the central research staff of the Allied Stores Corporation, is very similar to, but nowhere near as complete as the work in which I was engaged with the Retail Research Association, which happens to be comprised of stores which are each independently owned. They [fol. 329] have no inter-relationship. The Dayton Company for example is a member of that Retail Research Association and the Retail Research Association has been engaged in this type of work for a good many years before Hahns were organized and do a great deal more than we do, but we are trying to get as good.

Q. The Retail Research Association serves stores independently owned?

A. Yes, there is within the Retail Research group a subgroup which happens to be non-owned, known as the Federated Department stores, Filene and White of Boston, Abraham and Straus of Brooklyn, Bloomingdale of New York and of Cincinnati. They have a common ownership but also belong to the Retail Research Association. The other members of the Retail Research Association are each independently owned.

Q. Is this research service and the advisory service which goes with it, available to any department store that wants it?

A. That type of service can be and is being purchased. There are a few independents who operate on a fee, for instance Amos Parish, who is employed by a great many independent stores and we have hired him for some of our stores to do research jobs, and there are available to other groups similar services which are operative. The Cavindish

stores, which is a group of independently owned stores has such a set-up. The American Retailers, Incorporated, to which a group of the Rufe belonged before it became a [fol. 330] member of the Hahn stores, operate such a service and I am sure there are also several others available.

Q. Does the Rule pay a fee for that service to the Allied Stores Incorporated?

A. We pay a fee to the central buying office for the advisory and constultant service.

Q. What is that fee measured on?

A. On what costs to do the work and amounts to what we would pay for such service from any independent.

Q. What do you call the man who visits the stores to consult with you about problems on which you have made a study?

A. By his name. I don't know that he has a title.

Q. Let's call him consultant. When the consultant comes to your store to consult with you about these problems, what do they give you, direction or suggestions?

A. Suggestions.

Q. Are you under any obligation to the Allied Stores Corporation to follow their suggestions?

A. We are under obligation to turn them down if we don't think well of them.

Q. The Rule, I assume, is in competition with various other department stores?

A. The Rule is in competition with various other department stores and with various other stores of all types in both St. Paul and Minneapolis.

Q. Is there a general inter-city competition between the department stores?

[fol. 331] A. Yes, naturally the competition with Minneapolis is not as intimate or complete a part of our problem as the competition in St. Paul, but Minneapolis competition is a ever present factor in the operation of our business.

Q. What are the principal department stores in St. Paul with whom you are in competition?

A. Emporium.

Q. Designate whether these are independents or associated with a chain or association?

A. The Emporium is a local corporation I believe. Schunemann and Mannheimers is a member of Consolidated Stores Corporation, which operates a number of specialty

stores throughout the middle West. Montgomery Ward is pretty keen competition. Field Schlick, Inc., independently owned, Husch Bros. now independently owned, Bannons Department store, a corporation, but independently owned.

Q. All these stores are located within a few blocks of the Rule?

A. All except Montgomery Ward?

Q. The rest are in the business center of St. Paul?

A. Yes, central shopping section.

Q. Do they all carry lines in competition with the lines carried by the Rule?

A. Yes.

Q. How about the size of these stores in relation to sales, if you have any knowledge of that matter. As far as competition is concerned, are they in the same general class as far as size is concerned?

[fol. 332] A. They are in the class of large size department stores and we consider them large size competition.

Q. What stores do you compete with in Minneapolis? Tell us the names and designate whether or not they are independently owned.

A. Dayton Company is owned by a corporation, whose stock is also entirely owned by the Dayton family. They also have a branch store on the campus of the University. They are a member of the Retail Research Association, which I was previously associated with in my first experience in business.

Q. Is the Dayton Company the largest in the Twin Cities in point of volume of sales?

A. It is. We compete with L. S. Donaldson, Powers Mercantile Company. Powers is a member of the Associated Dry Goods Company which is a centrally owned group of department stores somewhat similar in capital structure to the Allied Stores Corporation.

Q. Do you know how many stores they have in that chain?

A. I believe seven; two in New York, two in Buffalo, one in Baltimore, one in Louisiana and one in Minneapolis.

Q. Is that what is commonly known as an ownership chain?

A. I don't know the legal definition of ownership chain, but it is wholly owned by the central corporation.

Q. What are the other Minneapolis department stores?

[fol. 333] A. Those are the ones we hear about most. We have some customers who trade at the Leader and a number

specialize in specialty stores such as Young-Quinlan, Thomas & Co., previously Atkinsons, Harolds. We hear quite a good deal about them. The department stores are all large department stores.

Q. What competition do you have, if any, other than department stores?

A. It is our peculiar fortune or misfortune to be engaged in the serving of merchandise to meet almost every kind of human want and we compete with any type of organization which is in the business of satisfying many of those wants. Therefore, we compete with so-called typical chain stores, so-called specialty stores, whether they specialize in one or several lines. Many of the furniture stores are definite competition, shoe stores are definite competition, food stores and we compete with chain and independent grocery stores. We are also in competition with all drug stores in toilet articles and drugs, so we cannot consider that we can overlook and established agency, which is a distributing agency, since we compete with the public for patronage in almost all lines of merchandise and anybody else selling any of the lines, is necessarily a competitor.

Q. Indicate some of the more important nondepartment stores in competition with you in St. Paul and state whether or not they are chains.

A. Let's start across the street. We have Cardozo, a large furniture store which also carries some apparel and [fol. 334] jewelry and other lines. Cardozo is an independently owned store, although I happen to know that Cardozo is a member of a group of furniture stores which operate together in the market, much the same as we, as an ownership chain would.

Q. How does the Cardozo store compete in size with your furniture department?

A. It is considerably larger. They do a considerably larger furniture business than we do. Then we have Weyands, which is a single store and the St. Paul House Furnishing, which is one of two stores. They have the same ownership in Minneapolis for their store. We hear a good bit of Boutell Bros. and the New England in Minneapolis. We have fairly tough competition in the midway district. Those are the principal ones I have mentioned in the furniture line and on the same side of the street there are three, four shoe stores which are competitors. I became interested to know

how many stores we do compete with and if you are interested, we have Allens, which has two stores in the Twin Cities, two Edisons, which is part of a Minneapolis shoe chain, about seven Tom McAnn stores, which are part of a national central ownership chain, two Feldmans, two departments within stores which are operated by leased operators called Wold, two operated by Senac, who make a business of leasing department stores throughout the country, Florsheim with two stores in the Twin Cities. They have stores all over and are all owned by Florsheim Com- [fol. 335] pany, Shiff has two in the Twin Cities, French Shrimer has two stores in the Twin Cities, Walkover had two but only have one now in the Twin Cities. Some of these shoe stores are started by factories who made shoes and wanted additional out-let for their protection, and there are other groups of shoe stores which are merely centrally operated merchandise organizations who buy shoes from other people and they have taken Allens, Edison, Wold, Senac, Shiff, Minneapolis Shoe, Home Trade, two in Minneapolis, Tradehome over here. That is just some of our competition in shoes in addition to full departments in all department stores, specialty stores. Then there are a great many women's apparel stores, such as Field, Schlick, Young-Quinlan, Thomas & Company. There is a specialized unit such as Learners. They have only one store and they are next-door neighbor. They are one of a central operated chain of specialty stores, which have been quite successful over the country.

Q. Do you know the name of the company?

A. I believe it is Learner Company. They do a business of between ten and twenty million. Then we have Morrisons which is a specialty store of a national chain operating largely through the central west. Mangels, which is a national chain, Newmans, which have a hook-up of a semi-national chain.

Q. Is the name of Morrison store, the Morrison Company?

A. Yes. In men's wear, our largest competitor is The [fol. 336] Rothschild Company who operate three stores out of Chicago. They have a store in St. Paul and in Minneapolis and a branch store in Minneapolis and I think a branch at the University campus.

Q. Do they have other stores?

A. One other in Chicago. We also compete with Richmonds, which is a factory owned chain store. They run their own store and merchandise their own products.

Q. Is that Richmond Company?

A. I don't know whether it is Richmond Company or Brothers.

Q. How many stores do they have in Minnesota?

A. I don't know.

Q. More than one to your knowledge?

A. I am sure they must have more than one. Then we have competition from Foreman Clark, which is in your definition a chain of men's clothing shops. We have competition from Cooks, a store here and one in Duluth.

Q. Do they operate outside of Minnesota?

A. I don't believe so. Then we have competition with Hubert White, who has only one store. That is some of the competition we have in addition to men's clothing departments in all the department stores. We have competition in the drug department with practically all the drug stores and that is the neighborhood as well as the down-town drug store. We are in competition with grocery stores and meat [fol. 337] markets in connection with our food shop and incidentally our toughest competition is the independent and not the chain store. The notion department is in competition with all five, ten and 25¢ variety stores as well as notion departments in all department stores. Do you want me to go on?

Q. We just want a broad idea.

A. I have hit all the highspots.

Q. Your grocery department competes with all the grocery stores?

A. I presume so. In every corner of the city there are grocery stores so we must compete with them.

Q. In respect to margins of profit, or profit ratio, I mean percentage of net profit in terms of gross sales or net sales. I have been using the term gross sales. What is the difference between gross and net sales?

A. The difference is the returns from customers. In other words, if you sell $100 worth of merchandise and $10.00 is returned for credit, that is deducted from the gross amount and becomes the net balance. The net is the amount that sticks and profit figured as the percentage of the net sales.

Q. What is the fact whether the average margin of profit

is the same or different on different lines of goods, say first as shown by department stores?

A. There is the widest kind of difference, from a pattern department on which we constantly lose money, 10 to 15% of our net volume, to the corset department, which is quite [fol. 338] profitable and might make 10% net profit. Furniture would make 10% in good times and in bad times lose 20%. There is the widest range between the various departments, from 10 to 20% loss very constantly over a period, to 10 to 12% net profit. With a department where we carry some 35,000 different items, as in the toilet goods department, you have a large percent on which you lose and a fair percent on which you make a fair profit. There are a number of items in the toilet goods department on which we make 20% net profit and a great many in the department on which we make no gross profit and lose actually the cost of doing business. That department alone, with 35,000 different items might render you 15% loss for the department, or if you have good management, a three to four per cent net profit, so the possibilities of profit in a given department are tremendous.

Q. From your general study of retail business, tell us what is the fact in respect to the variation in ratio of profit in different lines of business as conducted by stores other than department stores, such as groceries, hardware or furniture?

A. I cannot carry these variations in my head, but some statistics are available and are published in reports and some made up by the Government and some made up by various research organizations. There is a difference in profit for example in stores which sell groceries only. The well operated grocery store would make 1½% net on its sales. Furniture and specialty stores have in the good times made an average of 10% net and then went through a [fol. 339] period where they lost a great deal. It would range from 1½% loss to 10% net gain. I don't think of any of any group which in recent years made over 10% as a group constantly.

Q. What is the fact whether any store or group of stores, carrying one line, would have a uniform or constant ratio of profit from one period to the other. Suppose you take any given line of business, say department stores, whether the same average profit in department stores or any particular department store is likely to be constant from one

year to another; from one period to another or whether there is a wide variation?

A. Generally speaking, there are very wide variations. We have tried for years that I have been studying this business and I have been at it for seventeen years and I am still very much in the dark about things which looked easy when I started in. We are trying to find out. We are trying to find out if there is any factor which has a high co-relation with net profit in a department store, but cannot find it. If there was a direct co-relation between volume and profit that would simplify our problems considerably or if there was a direct co-relation between expense and profit, it would simplify our problems considerably, but unfortunately our business is such that we deal in all commodities, with different types of people under all circumstances and I am almost ready to come to the conclusion where human nature is such a fundamental factor, it is pretty hard to arrive at a foundation either in our thinking or operation. I have a [fol. 340] few very recently published statements of some stores which indicate a considerable variance between the profit made by a given store over a period of years and profits in relation to sales as to any constant relation. The question immediately before us is the variation in profits from year to year by any given concern. In women's wear I have a statement Bloomingdale sold $24,377,778 for the year ending January 31, 1930, to a low of $19,202,933 for the year ending January 31, 1933. The 24 millions was in 1929 and the 19 million was in 1932. The profits during that period varied from $1,384,986 to $3,269 and back up to $416,437 and then down to $318,000. The Abraham & Straus store during the same period had a high of $26,703,949 for the fiscal year ending January 31, 1931. On that it made $910,051 net profit. The lowest point of volume was $19,213,992 for the year ending January 31, 1934, on which $666,155 net profit was made. In the year just finished, January 31, 1936, their volume was up again to $20,962,266 and they made $705,936 net profit. In the preceding year on approximately the same volume, they made only $526,596 profit which was less profit than they made in their year of lowest volume. Filene had an extreme variation from 47 million for the year ending January 31, 1930, to a low of 30 million for the fiscal year ending January 31, 1934. In the peak year, $2,269,404 net profit was made and in the low year $1,032,107, but in the year just passed, ending

January 31, 1936, $32,537,638 was the net sales, which is [fol. 341] approximately two million more than in the lowest year and the profit was $672,000 as compared with $1,032,107 when two million dollars less business was done. The F. & R. Lazarus Company had done through all these years a less volume of business, but had a higher percentage of profit ratio in most of the years. Last year for example they had $16,054,078 net sales and a net profit of $800,000 as compared with Bloomingdale who did $22,084,314 net sales with $317,982 net profit. Now one interesting case is the case of Franklin Simon and Best and Company. They each individually operated and owned specialty stores in New York City. Best & Company is on the corner of 35th and 5th Avenue and Franklin Simon is at 38th and 5th Avenue. They are on the same side of the same street, within three blocks of each other in the same shopping district and are as near alike as any two types of stores could be. Best & Company for the fiscal year ending January 31, 1935, had a volume of $13,328,753 and realized a net profit of $1,133,953 or approximately eight per cent of its net sales. Franklin Simon for the fiscal year 1935, did a volume of $10,102,158 and their operating loss was $147,752. Two stores on the same side of the same street doing the same class of business, doing very close to the same volume of business and one makes $1,133,953 profit and the other loses $147,752. If there is any explanation for that I am sure Franklin Simon would be interested to know it.

Q. Instead of comparing individual stores, suppose you [fol. 342] take the average ratio of profit made by all the stores in any one line of business and compare one period with another. Would your ratio be average or constant or a wide variation?

A. Statistics show a wide variation. There are a few reports which we consider to be standard and authentic, which we use as guides to our thinking and planning. One such report is prepared by the National Retail Dry Goods organization and another is prepared by Harvard University, Bureau of Business Research, but both reports are strictly impartial and scientifically compiled. The range in net profit among the total group of department stores has varied very materially. It has had a fairly constant downward trend for a number of years. It has however varied largely between those years. Those reports are avail-

able and open for anybody's inspection. There is also an attempt in each of the reports to classify our stores in groups according to volume and there have been some very interesting things happening as the averages of those classes are compared. Within our own company where we have 33 stores, it happens also that the smaller stores have in recent years had the best percent of profit. We don't attempt to generalize on facts of that kind, it is the fact. Maybe it is because those of us in the larger stores don't know our business so well, but we have made a sincere study, and there is seemingly no true co-relation between volume and percentage of net profit within a given company under the same management within a period of time, between companies of different size or what have you. We have [fol. 343] sincerely endeavored to find whether there was such a co-relation because it would simplify our problems.

Recess for fifteen minutes.

Mr. Doherty: We have agreed to excuse Mr. Roth until Monday morning.

H. R. Gerwig, sworn on behalf of plaintiffs, testified.

Examined by Mr. Doherty:

Q. You live where?

A. 2607 Harrison Street, Evanston, Illinois.

Q. What is your business?

A. Senior partner of Gerwig & Gerwig, statisticians, 39 La Salle Street, South, Chicago.

Q. What previously has been your education and training?

A. Graduate of high school in 1910, one year of college work, 1911, business college 1912 and then went to work. First year went to University, School of Commerce, specializing in accounting and auditing. In 1916 took examination for C. P. A., passed examination and received degree from the University of Illinois. My business experience,—miscellaneous jobs from 1912 to 1915, 1915 to 1917 with McCoy & Company, investment bankers, Chicago as statistician, analyzing investment securities prior to their issuance, investigating outstanding securities and similar analytical work. 1917 to 1918 with Wilson & Company, meat packers, in charge of the Government Statistical depart-

ment, supplying statistics relative to Wilson & Company's [fol. 344] packing business to all governmental agencies. 1918 to 1919, Ensign and Lieutenant in the U. S. Navy, stationed at Washington, D. C., making cost investigation and analyses of accounts of leading operators of war material to the Navy department. 1919 to 1927 comptroller in charge of all moneys and assistant to President of Austin Nichols & Co., Brooklyn, N. Y. wholesale grocer. 1927 to the present time, senior partner of Gerwig & Gerwig.

Q. What was your work with Austin Nichols & Company?

A. In charge of all moneys and accounts. I started with Gerwig & Gerwig in 1924 as silent partner until 1927 when the business grew to such a size it was advisable for me resign from Austin Nichols & Company and since that time I have been the Senior partner.

Q. Will you tell us Mr. Gerwig what the nature of the business of Gerwig and Gerwig has been since your connection with it?

A. It consists of analyzing the financial statements of leading industrial corporations, our specialty being analyzing the statements of leading chain stores in all lines of activity. We analyze the accounts of given stores, such as National Tea, Atlantic and Pacific, Maceys and other leading chain stores and compare each respective statement with other concerns in the same line of business.

Q. From what material do you make such study?

A. We obtain our information from authentic figures sup- [fol. 345] plied to us by the corporation on which we report, check against at least two independent sources. Included in those two independent sources, are the following different statistical manuels such as Poors, Moodys, Fitch, Wall Street Journal, Commercial and Financial Chronicle and other publications of a similar nature. As a recognized statistical agency, we receive reports from all leading stock exchanges, including the New York stock exchange, Chicago stock exchange, Cincinnati stock exchange, Pittsburgh and others. Every figure we use in our reports is checked against at least two other sources to insure its accuracy, a large portion of our clientele being investors, investment banks, brokers and so forth. Under the recent Security Laws, we would be subject to heavy penalty should we make mis-statements as to net profits or net sales.

Q. Does your study of this chain subject, include a study of the different sources you have mentioned?

A. It does.

Q. You have mentioned some of the classes of your clients. What other classes of clients do you have than those you have mentioned?

A. We sell public accountants, attorneys and executives and directors. In the lines of business on which we report, for instance, when we issue a report on a chain grocery system, comparing that chain grocery system with other chain grocers, the grocery trade of the country is interested, whether it be chain or large retail grocer. Our reports are [fol. 346] known to the respective industries on which we report or trades, as the case may be.

Q. Can you give us some idea from how many companies or what kind of companies you receive annual statements?

A. We have annual statements in our files from over 3500 publicly owned corporations, industrial corporations.

Q. What do you mean by publicly owned?

A. We distinguish a publicly owned company from a closed corporation, publicly owned being one whose stock, bonds or notes are more or less in the hands of the public. We distinguish that from a family or closely-held corporation. For example, Griggs Cooper, the prominent wholesale grocer, we consider a publicly owned corporation. A store such as the Dayton Company is a closed corporation. We would have no information on the Dayton Company and would make no effort to get it.

Q. What is the nature of the service you sell to your clients?

A. It consists of a complete report on a responsible company, accompanied by a supplemental report comparing sales and net profits and other revelent information of concerns in the same line.

Q. I suppose it depends on what they want?

A. No, we originally prepare a report which we believe will appeal to a number of people, so we are using a standard report which will reach a great many people. For [fol. 347] instance, a report on the Kroger Grocer Company and compare Kroger's figures with other leading chain grocers, including the Atlantic and Pacific, Safeway, American stores of Philadelphia, First National of Boston and other typical chain grocers, striving to find some sort of a relation between profit and sales.

Q. Does your study and analysis cover, generally speaking, the question of sales of industrial companies, sales and

profits, ratio of sales, relation between sales and profits and all kindred subjects?

A. Yes, it does.

Q. And that has been true of the period of time you have been in that business?

A. Yes, it has been true of the twelve year period.

Q. Based on your study and experience, can you tell us whether or not it is generally true that the ratio of net profit, I mean the percentage of net profit, the percentage of gross sales and net profit between different kinds of lines of business, as a general rule has any uniformity or whether there is a wide divergence?

A. All our study seems to indicate there is no unformity between the percentage of net profit to gross sales at between different lines of business.

Q. I mean the average net profit in a particular line as compared to another line or the maximum or minimum?

A. Yes, for example, if we take 15 representative chain groceries and compare them with representative chain variety stores, we will reach two widely different relation- [fol. 348] ships. There will be no harmony between the two. To carry that on a percentage angle, the chain grocer will average less than two percent in 1934. The chain variety stores will range in excess of six percent. We can take other lines such as chain shoe stores, furniture, department and drug stores and they will range between those two figures. They will not exceed six or seven percent in the case of the variety stores and these other stores will undoubtedly be a trifle higher than the competitive grocer chains. I am speaking of 1934 and that same difference in percent would apply to any year previous or would apply to the year 1935, in so far as it relates to companies whose 1935 figures are available.

Q. How about the relation between the average ratio of net profit in any particular line of business from one year to the other?

A. There will be a wide difference. A variety chain that would earn six percent in 1934 might earn four and one-half percent in an earlier year or might earn three percent in a year preceding and there would be no fixed harmony in any given line of business as between years.

Q. What would be the fact between the different companies or firms in the same line of business.

A. Take grocer chains in 1934. I said previously the percentage of a representative group was less than two percent. In that tabulation, there were some companies operating at a loss. There were some concerns which made [fol. 349] in excess of three percent. I have in mind one concern earns as high as six percent on groceries, a concern operating in Canada known as the Lablow stores.

Q. Are those differences typical?

A. They are typical not only of 1934, but for all figures we have and to date for 1935 and for all the years on which we have a record prior to 1934. We cannot establish any definite relation.

Q. How about comparison of net profit ratio of any particular concern in a given line from one year compared with another?

A. Take any company we have a record of and the percentage of profit to sales ranges widely between years. For example, a concern which would earn two percent in 1934, in the chain grocery line, might have earned three and one-half in some previous year and in a much earlier year, five per cent, because in the grocery line the general trend of profits has been downward in many specific instances. I have in mind the Atlantic and Pacific stores. The first year of which we have a record is the year 1915 of the relation between net profits and sales. If my memory serves me right, they earned in excess of four percent on their sales. They have never equaled that figure since, although their sales have been 40 times greater than they were in that first year. I am speaking of percentage of net profits to sales.

Q. What is the fact as a result of your study and experience as to whether there was any relation between the volume of gross sales in any particular business concern, [fol. 350] be it a single store or chain and the ratio of net profit that concern may earn?

A. There is no relation. The largest chain drug store, I mean the one doing the greatest volume of business is Liggetts, passing through receivership, nothing but losses. The second largest from the standpoint of volume is Walgreens and doing a very splendid success. There are smaller concerns, smaller than Walgreens earning a larger percentage of profit to sales. The largest concern in any chain store system, as a rule, earns the smallest percentage

of profit to sales. It seems to be the penalty for a concern becoming large.

Q. Take a given concern whose gross sales are growing from year to year. Does that tend to increase or not its ratio of net profit or is there any rule about it as far as you are able to determine?

A. There is a general rule that we seem to sense in the figures of a given company. It is exemplified by the Atlantic and Pacific again, that the larger a chains' sales become in dollars, the smaller the percentage of profit to sales seems to become. There will be variations as between years, but as the research men like to say, there is a tendency in the trend downward to the profit percentages.

Q. Have you made some compilation illustrating the conclusions you have been stating?

A. Yes.

Q. I show you Plaintiff's Exhibit O and ask you if that is the compilation?

A. Yes.

Q. What is the nature of that compilation?

[fol. 351] A. To be brief it compares chain stores in four lines of business, department stores, drug stores, grocery stores and variety stores. It gives three years for each of those four classes. It compares the sales, the number of stores, the profits, and percentage of net profit to net sales of representative stores under each heading and in addition it gives, a question that has come up here, the relation between sales and inventories of each of the chains. In addition to this information by chains, we give a history of five representative chain stores going back as far as the information is available. By information, I mean number of stores, sales, net profits and percentage of net profit to sales. These five companies are the Atlantic and Pacific, Kresge, National Tea, Penney and Walgreen. Profit information is given for each of these five companies as far back as figures are published. I want to emphasize again, every figure given in this compilation has been checked from at least two independent sources, sources available to any person from any public library.

Q. Is this compilation entirely your own personal work?

A. Everything in here was done entirely by myself, my own personal work. Every figure I have put down has again been checked by my partner.

Mr. Doherty: Offer in evidence Plaintiff's Exhibit O.

The Court: Received without objection.

Mr. Doherty: That is all.

[fol. 352] Cross-examination.

By Mr. Orfield:

Q. You have stated Mr. Gerwig that the largest chains show a smaller profit per dollar of sales than the smaller chains. Is that correct?

A. I said in many lines of business the larger chains are showing a downward trend as far as the percentage of profit to sales go and in some instances show an extremely low percentage below the average. I don't want to make the point they are necessarily the lowest, because some chains operate at a loss which would make them lower than those which operate at any profit at all.

Q. Your figures show that the Atlantic and Pacific Tea Company, with its 16,000 stores, shows a greater than average net profit to sales?

A. May I have the tabulation? Take in the year 1934, the average for 18 stores, including Atlantic and Pacific was 1.93% of sales and the Atlantic and Pacific made 1.98%, slightly above the average.

Q. Referring to Woolworths variety store, in point of number of stores, that is the largest on which you have the figures?

A. Yes, take any year here. Take 1934, the average of nine companies in the variety chain line was 6.92% on sales, Woolworth made 8.04%.

Q. It is true they are the largest?

A. Yes. One of the smallest companies.

Q. Just a moment. As to the total net profit of the large chains as compared to the small, how would that compare in dollars? Generally speaking, do the larger [fol. 353] chains have the larger net profits?

A. Naturally the largest group would have larger profits than any of the smaller groups. Do you mean standpoint of volume?

Q. No. It is true that the larger chains have larger net profits in point of volume.

A. That is a fact.

Q. And they would have greater ability to pay larger taxes?

Mr. Doherty: What kind?

Q. Chain store tax. It is true that a corporation with a greater income has a greater ability to pay taxes than a smaller concern with a smaller income?

A. Yes, there is more money available.

Q. Is it not true then that there is some relation between the size of your chain and the capacity to pay the chain store tax?

A. I would not say there is a fixed relation. I want to give an example.

Q. Just generally speaking, is it not true that the greater the chain, the greater the capacity to pay the chain store tax of that chain?

A. Not proportionately as compared with a smaller chain.

Q. Is it not true that the larger chain, having as you have stated the greater net profit, has greater capacity to pay the tax than the smaller chain, a tax in the same amount?

A. If the tax were in the same amount, it would have a greater capacity to pay that tax.

[fol. 354] Mr. Doherty: I object to that as immaterial.

Mr. Orfield: I will change the question.

Q. Is it not true that the larger chain can better pay the larger chain store tax than the smaller chain?

A. I would not say so because it has more stores on which to pay taxes.

Q. Is there a relation between the volume of business done by a chain store corporation and the tax which that corporation should pay?

A. I have no figures to show that.

Q. Would you be able to state the average speed of turn-over of the various chains whose businesses you have tabulated?

A. We have a figure which is not exactly turn-over but the relation of the sales to the inventories.

Q. It approximates turn-over?

A. True turn-over is based on cost of goods sold, but we have taken here for rough purposes, the relation of the sales to the average inventory at the end of the year which gives a very good comparison.

Q. Does your tabulation give those facts?

A. Yes, it does.

Q. Are you familiar with the business methods of these various chains which you have analyzed?

A. I am not. I am simply a fact collector of the final results, the balance sheets at the end of the year and income accounts. As to the physical factors which enter into the conduct of the stores, or the way they handle personnel or [fol. 355] whether they own their stores or rent them, I would not be the proper person to answer that question, because my studies do not go into those facts.

Q. Have you any information as to the extent to which taxation enters into the cost of merchandising?

A. I have not. Taxes are spread through the accounts in many ways. Federal income is the only tax in many corporations. Sometimes when there is a sales tax, the amount of the sales tax will be indicated and many times it is not.

Q. (Mr. Rutchick:) Are you able to say from all your judgment, experience, observation and study which you have made in relation to the chain store operation if it is not true on the whole, net earnings in a business are higher when sales are larger in comparison with a business where sales are comparatively speaking, smaller?

A. I would not say so.

Q. You say the net earnings in a business having a larger volume of business are not larger than a business or chain doing a lesser volume of business, net in dollars?

A. Surely. In other words, a business that is ten times the size of a small business the percentage of profit would be the same, but the earnings in dollars would be ten times.

Q. The larger the net earnings?

A. Yes, the net profits.

Q. It is further true, is it not, that the capacity to pay a tax increases with the gross receipts of a business?

[fol. 356] A. I don't exactly agree with that.

Q. But the capacity to pay? Business having a larger net earnings has a greater capacity to pay a tax than a business with smaller earnings, tax based on the gross volume of business?

A. I don't agree. It can pay a larger dollar tax but not relatively a larger percentage of tax to profits. Otherwise everything would be disproportioned.

Q. Is it not true that in the conduct of business there is a recognized policy among business men that it is desirable to obtain a greater volume of business, or to continually move in the direction of greater volume of business?

A. All concerns hope for larger volume.

Q. That is a recognized business policy?

A. Yes it is.

Q. The reason being that while there may be a smaller percentage of profit, there is a larger net profit as the business increases.

A. There is a larger dollar profit, but a smaller percentage of profit to sales.

Q. Therefore does it not follow there is a relation between the capacity to pay a tax and the amount of business done, in proportion to its volume?

A. Yes, in dollars, but percentage on sales, not.

Mr. Orfield: That is all.

Redirect examination.

By Mr. Doherty:

Q You stated broadly that the larger business the larger [fol. 357] the dollar profit. Is that an invariable rule?

A. It is not. As I stated earlier, here is Liggetts, the largest chain drug store operating at a loss.

Q. In other words, when you made that statement, you made the statement as of the average?

A. Yes, of the average.

Mr. Doherty: That is all.

Adjourn until 10 A. M. Monday.

Stanley Roth, recalled.

Examined by Mr. Doherty:

Q. Mr. Roth, on Friday, you gave some testimony bearing on the question of the relation between volume of sales and rate of profit in percentage of sales. I don't recall whether you stated your general conclusion on that subject or not. What is the fact whether there is any relation between volume of gross sales and percentage of profit earned?

A. As I said Friday a good many earnest students of the subject have spent many years trying to discover whether there is any positive co-relation as between volume as such and percentage of net profit as such in the department store business and as far as I am able to discover, no one has yet been able to establish any such co-relation. In my conclusion, as far as my experience is concerned, I could say I know of no co-relation plus or minus. There are indications over some periods, stores doing a smaller volume of [fol. 358] business are more profitable than stores doing a large volume of business. There are indications sometimes that larger stores are more profitable. In all the statistical knowledge which I have studied for many years I can find no constant relation between volume of sales and percentage of net profit.

Q. You testified to the difference in profit ratio in different departments in your store. What are the factors producing those different profit ratios in one department compared with the other?

A. If I had four, five weeks I could explain a few of them. Our business fortunately or unfortunately is a business of indefinite intricacies filled with an enormous number of variables. One of the great variables is that thing which we call fashion. Fashion changes sometimes slowly and sometimes rapidly, sometimes broadly and sometimes narrowly. We do our best to study it and yet the very best any one of us has been able to do is still unsatisfactory, because it depends on the thinking of a tremendous mass of people. I don't know that anybody yet has been able to predict how the masses will think. The desires of masses of people will change and their notions of things esthetic and artistic may change. As long as we have this tremendous variable, which we designate as fashion, it will affect specific items of merchandise from day to day, week to week and season to season. Flowers for example. Dress flowers this year are in fashion. When they are in fashion, they are a very profitable item. About nine years ago they were in fashion and I remember in that year, we made about [fol. 359] 15% net profit on dress flowers. Ever since that time we have lost money on them because they were out of fashion and this year they are in fashion and will be profitable. There is an incident of a particular item, which two years out of ten has made 15% net profit and eight years

out of ten has been a loss item. Certain lines of merchandise are so set up in the manufacturing and distributing phase so that it is easy to sell them in a retail store profitably. Other items are so subject to cut-throat competition at the source of supply, competition in the raw materials from which they are made, competition among the manufacturers, competition among the distributors themselves, so that it is an extremely difficult matter so to arrange the flow of merchandise in those particular items, that one may dispense them at a profit. I mention among the profitable departments, fairly constantly over a period of years, in a department store, the corset department, yet I recall a period when it was fashionable to wear very little in the way of corseting and during that time the corset departments were unprofitable. There happened to be a relatively short time over all the swing of the last 15 years when the corset departments have not been profitable almost all the time. When the silhouette changes and there is a greater emphasis on a nipped-in waist corsets will sell more generally. The manufacturers of corsets are relatively few in number and secondly they seem by tacit consent to recognize that the [fol. 360] distribution of corsets consists primarily of a sale of service rather than the selling of a piece of cloth with hooks on it and garters hanging therefrom and they realize if they will develop an idea which will serve a woman to make her clothes more pleasing and all of her clothes look better, a woman will pay a fair amount of money because she is getting a very excellent service. Most manufacturers request of the retailer that he sell the corset at a fixed price and this is not a demand but a request. Most retailers of corsets have been sensible enough to maintain their prices and over a period of time corsets have been relatively profitable. They do not change in fashion rapidly but gradually so we do not have the obsolescence to worry about.

Now let's talk about women's suits as another thing. This is an item which is the most difficult item of merchandise which we have to experience with. Sometimes they are in vogue and sometimes they are not. When they are not in vogue, there is a persistent effort on the part of manufacturers to put them back in fashion. They do everything they know how to get fashionable women to wear two-piece suits and with the slightest encouragement, broadcast over the world announcing that suits will be good. In the past 15 years we have had about two, maybe three suit seasons.

We have had predicted at least ten good suit seasons in the last ten years. We have bought suits on the basis of those predictions during the years when the public did not agree with the predictions and the results have been disastrous. [fol. 361] Each store did buy some suits hoping a suit season would develop. It is a peculiar thing, a good many women do not want them and a good many do and when they don't want them you cannot give them away and when they do, you cannot get enough. If it is a suit season, then what kind do they want, two-piece strictly tailored, three-piece tailored, two-piece dressy, three-piece dressy, short coats or long coats or do they want black or grey. As a matter of fact this year which has been the best suit season in years, it has been extraordinarily difficult to make a profit, because the public mind changes so very rapidly and the type wanted in a January and February is not wanted today and the type wanted at the beginning of March is wanted at the end of March and early April. It is extremely difficult for manufacturers to know what the public wants. For some reason no one is able to discover these changes in public demands for fashion come in waves and hit all over the country pretty much at the same time. The problem of manufacturers is to attempt to anticipate these changes and they are largely unable to do so. When an item becomes a sharp demand from a dormant item, you send in orders and cannot get deliveries, manufacturers cannot get the piece goods from the mills. I should say that is one instance of an item, a department which if is difficult to make a profit on and over a score of years shows a loss. Then you have another department. Take radios for example. At the height of the demand for radios, comparatively few stores made a profit, because the technical im- [fol. 362] provements in radios were coming so rapidly, that no sooner had one bought a certain set, then other features came out which added to it and it had to be discarded. There were millions of radios discarded on which no manufacturer, distributor or retailer made a nickel, and then you have rapid, constant, technical obsolescence.

The same thing holds true of electric refrigeration today. Very few people are able to make a fair profit on the sales of electric refrigeration. I could go on for hours as each department has problems which are unique themselves and the business is so complicated and there are so many different things happen and so many different items affected by

so many different factors, like material production, distribution method, fashion and customers' demands, the economical condition of the community in which you happen to reside, that with all our study, the best we can hope for is just a meager knowledge.

Q. How does the gross margin in one department compare with that of another? Is there any uniformity of that in a department store?

A. Let's define gross margin. To my mind gross margin is the difference between purchasing cost and selling price. That is substantially it. It varies materially between various departments, just as expense varies materially. We have in some departments a margin of 40% and in other departments we are losing money. For example, in groceries, the gross margin is 19%. We might have a few [fol. 363] departments where we have a gross margin of 20 or 25% and make a little money because those departments do not cost as much to operate. If you want the broad figure, I would say the gross margin varies in an average store from 15% on the low end up as high as 45%. Gross margin averages for total stores vary considerably with the composition of the stores, what lines of merchandise they carry and on what lines they do the greatest portion of their business. Statistics are very hard to compare because of these variations, but I think you will find in the National Retail Dry Goods Association's statistics, that the average gross margin in department stores has run somewhere between 31 and 35% in recent years, but that is a total figure and it is comprised of many 15, 45, 28 and 39 percents, which all taken together will bring out some kind of an average.

Q. How about the operating expense ratio in relation to gross sales? Does that vary largely?

A. Yes.

Q. And how about turn-over rate? Does that vary largely?

A. If you mean the movement of the stock, the relation between the average retail stock and the total retail sales, I should say there is a considerable variation there. We have departments which have a turn-over of one time a year, such as china, less than one time a year, oriental rugs. We have a department like dresses, with a turn-over of 15 times a year and in the groceries we would run 1244 turnovers a year.

[fol. 364] Q. Generally speaking, is your buying determined by departments or by the store as an entire unit? Do you mix the entire requirements of the store?

A. You mean does one person buy rabbits and horses and elephants too? We have 150 items we deal with. Our buying organization is set up according to the departments and one man or woman will buy the requirements of that department. I don't mean we have a separate buyer for every department, but we have approximately 50 buyers to cover 170 departments, but no one buyer buys for another buyer's department.

Q. Are these various department store competitors which you mentioned the other day for the most part long-established institutions in the Twin Cities?

A. Yes.

Q. What would you say Mr. Roth as to whether by reason of the ownership of its stock by the Allied Stores Corporation or by reason of any relation between the Rule and Allied Stores Corporation, it has any business advantage over the Emporium for instance?

A. None.

Q. Or over any of the large department stores in the Twin Cities you mentioned?

A. None by reason of having direct connection with Allied Stores. We don't consider that as an advantage at all.

Q. What do you say as to whether the amount of this chain store tax which is payable in Minnesota, could as a prac-[fol. 365] tical matter be added to the price of the merchandise sold by the Rule and Donaldson's and then collected from the customers?

A. We have not attempted to add anything on to the price of our goods and I should say it is very easy to add to the price of the goods in your store but it is awfully tough to sell it after you have added it on. If your price is right, your customer will buy and if not, she does not buy. Without such adding on the Rule has not been able, unfortunately, to make any net profit for the past several years. If everyone in town had a similar tax and it was mandatory by law and the customer knew of that tax, such as in Illinois, Ohio, etc. I think it would be an entirely different proposition, but only under those circumstances could the tax be taken care of.

Q. Under circumstances as they exist, what would be the

result in adding it on to the price and attempting to collect it from the customer?

A. We would not be able to sell the goods so we would have to mark them down and sell them without it.

Q. I show you Plaintiff's Exhibit P and ask you what that is?

A. 1934 Departmental Merchandising and Operating Results, summary for department stores and specialty stores, published by Controllers' Congress, National Retail Dry Goods Association.

Q. What is the National Retail Dry Goods Association?

A. The National Trade Association of department stores and specialty stores.

[fol. 366] Q. Do you know how many stores belong to that association?

A. I don't know exactly, but there are several thousand.

Q. Generally distributed over the United States?

A. All parts of the United States.

Q. What is the Controllers' Congress?

A. The National Retail Dry Goods Association has within itself a number of groups composed of executives in particular phases of the department store business. They are groups of general superintendents, groups of personnel workers, groups of merchandise managers, groups of comptrollers, etc. Each one of these groups works together on problems peculiar to its particular part of the business. The Controllers' Congress is the group of controllers in the stores belonging to the National Dry Goods Association. That group has been in being for a great many years and has done some especially fine work in raising the standards in accounting and store control work and in the development of standard practices by means of which it is possible and only by means of which it is possible to derive comparable statistical information from stores all over the United States and on the basis of this information summarize properly results and make them available for any individual store to study.

Q. Do you know what is the method of study by which Controllers' Congress compiles this summary?

[fol. 367] A. A lengthy questionnaire consisting of questions and forms to which figures are to be filled in, sent out each year to members of the association. Those forms are filled in by each store. Each store knows in advance that the statistical information it gives will be kept strictly confiden-

tial. This data is sent in to the National Retail Dry Goods Association, Controllers' Congress and they are compiled and the results of such compiling are expressed in that book you have in your hand each year. An attempt is made in these studies to give to the individual store, by means of this mass of statistical information, first a store of typical results, medium results that stores actually are obtaining and each of the factors on which a report is made and also to indicate what the Controllers' Congress calls goal figures, namely, best performance, so that any store may know what the best results are on any particular phase of its problems, so that reports on averages are made.

Q. Is this distributed among the members of the association?

A. Yes.

Q. And it is accepted by them as reliable and accurate?

A. Yes.

Q. And acted upon by them as a guide in their business?

A. Yes.

Q. Is it true in respect to your own particular business? [fol. 368] A. Quite true. We use it in all of our planning work as a book of standards, compare our operation with typical and goal results and attempt to use these standards as a guide to the improvement of our own performance.

Mr. Doherty: We offer in evidence from Plaintiffs' Exhibit P, Table 3 on pages 31 and 32.

Mr. Orfield: How it that material?

Mr. Doherty: Our purpose is to show there is a wide difference in the margin of profits on different lines of merchandise, difference in gross margins, difference in various expense items, net profits, which is one of the very important questions in this case.

The Court: Received without objection.

Q. I will show you pages 31 and 32 of Plaintiffs' Exhibit P and ask you whether or not the statistics shown on those pages as typical figures are fairly typical of the experience of department stores in relation to the statistical data arising from the operation of the different departments of a department store, whether the variations found in them are fairly typical of the variations which will be found in the operation of a department store as tested by your experience?

A. Well, I should say yes. As a matter of fact this ex-

perience is much broader than my experience. I inquired recently as to the number of stores which contributed information to this report and found there were over 3,000 doing over one billion dollars of business giving the information, so I should say their figures are quite typical.

[fol. 369] Q. At the top of the page, headed 'Typical figures,' what is your understanding of typical figures as used in this manual?

A. Approximately average or medium results.

Mr. Doherty: You may examine.

Cross-examination.

By Mr. Orfield:

Q. You stated Mr. Roth that the Allied Stores have two stores in Minnesota. Is there any co-operation between these two stores in any manner?

A. What do you mean by co-operation?

Q. Any form of assistance, any form of joint action?

A. We discuss a lot of things together. We exchange information on results, we have one buyer in common. That buyer is the furniture buyer and the set-up is purely tentative, because in recent years there was a common buyer for the two departments for two, three years and it failed and we don't know whether it will be any better now than before. It happens he is a good man and we are paying him to buy for our furniture department as well as the other. In no other case I know of is there any co-operation, other than you would find in any independently owned group of stores which operate together as a group. In the Retail Research Association stores, of which Dayton Company is a member, for several years there were four, five stores in the central west——

Mr. Doherty: I don't believe that is material here.

[fol. 370] Q. Is it the policy of your store to buy for cash, taking the cash discounts?

A. Yes.

Q. Do you know what the average cash discount is on all the goods you buy?

A. Do you mean cash discount percent of cost purchases or cash discount percent to retail sales?

Q. I am basing it on gross purchases.

A. Many stores load discounts. They set an arbitrary percent in a given line of merchandise and load the cost price to such a point that it will permit the cash discount. We do a certain amount of loading in our company and that loaded discount will reach approximately 5% of the cost purchases, which is not 5% of retail sales by any means, as you know.

Q. You spoke of having fifty buyers. Are these men specially trained for this work?

A. Yes.

Q. Do you find that you make considerable saving by reason of the fact you use specially trained men to do your buying?

A. I don't know what you mean by saving? We have to use trained men. What do you save against?

Q. As what would your experience if your men were not so well trained. In other words, I am asking whether the fact your men are specially trained to buy in their respective fields, results in an advantage to the store?

A. The only way I can answer that is I would say a stupid buyer is a very expensive person.

[fol. 371] Q. Would it be true your small competitor, the little corner store which does exist here and there throughout St. Paul, would not be able to have the advantage of as skillful buying as you have?

A. Well, that is a common assumption, but let's analyze it. We have 50 buyers——

Q. I don't want an analysis, I just want a direct answer.

A. The answer is—not necessarily.

Q. In addition to the cash discounts which you receive, do you receive additional discounts in various lines on account of quantity buying?

A. In a few cases we do where it is a trade practice. In the floor covering department for example, the principal manufacturers offer volume discounts to anyone who is able to purchase in such volume as to earn such discounts. It is true in several lines.

Q. Would you know what total amount the store under your management nets per year by reason of this quantity discount?

A. I wouldn't know off-hand.

Q. Approximately?

A. It would be a very small amount in proportion to our total volume, but I can obtain that information if you wish.

Q. I would like to have you get that information. In connection with your buying, are there any special rebates given by any of the firms with which you deal?

A. I don't know what you mean by special rebates.

[fol. 372] Q. I mean rebates not given to the trade generally but come to you by special contract arrangement. Investigation has shown that the Atlantic and Pacific got special rebates one year in the sum of six million dollars. Has your firm gotten rebates of a similar character, rebates secured by you by special arrangement with individual firms?

A. I don't remember any. There may have been one or two cases, but I cannot recall, but I assure you there would be very few, if any such cases.

Q. Do your expert buyers from their expert knowledge, try to forecast the probable trend of prices in their various lines and buy in advance in order to take advantage of a rapid rise in prices?

A. My instructions to buyers in our store is that our job is retailing, not gambling.

Q. What arrangement does your company make to secure money? Does it get it from the local banks or from the Allied Stores Corporation?

A. Both, if you wish the details of that I would prefer you ask Mr. Eden. He is the comptroller of the store.

Q. Do you from time to time get buying information from the central offices of Allied Stores Corporation?

A. Lots of it.

Q. Do you find from your experience this information is helpful to you?

A. Yes, sir.

[fol. 373] Q. Do your expert buyers in their various fields, confer from time to time with the experts in the similar fields of L. S. Donaldson Company?

A. Yes.

Q. Do you find these conferences helpful to the success of your buyers?

A. Sometimes.

Q. Will you give us your definition of gross margin? It was used in connection with some of your testimony and I would like to have it made clearer.

A. As we define it technically, it is retail purchases, less mark downs, discounts and shrinkages. It is the actual dif-

ference between the net cost of merchandise as received in the store and the selling price.

Q. And that is the sense in which you used it?

A. Yes.

Mr. Orfield: That is all.

Redirect examination.

By Mr. Doherty:

Q. These buyers you speak of, are these people who spend all their time in buying?

A. No.

Q. About how much of their time in the course of a year do they spend in buying?

A. Anywhere from five to 25%.

Q. To what is the rest of their time devoted?

A. Managing of the departments, supervision of selling.

Q. They are not exclusive buyers?

[fol. 374] A. No.

Q. You said your companies by reason of having these buyers do not necessarily have an advantage over a smaller store which may have less expert buyers. What did you mean by that?

A. Well, larger stores have made for greater specialization and have many more buyers. The training of buyers is in most cases done by the head of the business. It is much more difficult for the head of the business to work with 50 than to work with two or three. In the smaller store you may have one buyer buying for 20 different lines of merchandise or you may have a smaller store carrying small lines of merchandise, but that does not mean it may not be doing a larger volume in their line than the department store. There are many shoe stores in the Twin Cities which would be rated as small stores since their volume is much less than ours, who nevertheless do considerably more shoe business than we do. Now, one buyer in the small shoe store is certainly every bit as expert, in many cases more expert than our shoe buyer. The same thing would hold true of the specialty store, of any kind. On the other hand, you have the case where the owner of the business does a great deal of all the buying in a small shop. In those cases that man as the owner of the business is a lot smarter, a lot more able than some of our hired buyers. His talent is

greater and because his talent is greater, he covers more ground and because he is in the position he gets probably a [fol. 375] good many deals that the individual buyer could not get. I should say this, stupidity has a high price in any retail organization, ability the same.

Mr. Doherty: Offer in evidence from Plaintiff's Exhibit P, Tables seven on pages 45 and 46.

The Court: Received without objection.

Mr. Doherty: Offer in evidence from Plaintiffs' Exhibit P, on page four, that portion beginning with—"The classifications or groupings used throughout this report are as follows:" followed by six definitions, ending with "Group VI."

The Court: Received.

Mr. Doherty: Offer in evidence from Plaintiffs' Exhibit P on page seven, the explanatory caption reading—"Departmental Results of Department Stores with Annual Sales of $1,000,000 to $2,000,000," and under that caption that portion on page ten beginning with the words, "Departments Earning Over 5% of Sales in 1934 with 1933 data for comparison," down to the end of the table under that caption ending with the words, "Radio—1934, 14.1—1933, 11.4."

The Court: Received.

Mr. Doherty: Offer in evidence from Exhibit P at the top of page five reading, "Departmental Results of Department Stores with Annual Sales of $500,000 to $1,000,000," and under that caption, the table on page seven, beginning with the words, "Departments Earning over 5% of Sales in 1934, with 1933 data for comparison," down to the end of the table, ending with the line, "Miscellaneous house furnishings—8.5—11.6."

[fol. 376] The Court: Received.

Mr. Doherty: Offer in evidence from Exhibit P, on page ten, beginning with the words, "Departmental results of Department Stores with Annual Sales of $2,000,000 to $5,000,000," and under that caption the table on page 13, beginning with the words, "Departments Earnings over 5% of sales in 1934 with 1933 data for comparison," down to the end of the table ending with the words—"Tires and Automobiles Accessories, 13.6—4.8."

The Court: Received.

Mr. Doherty: Offer in evidence from Exhibit P, on page

13, reading "Departmental Results of Department Stores with Annual Sales of $5,000,000 to $10,000,000," and under that caption the table on page 15, beginning with the words "Departments Earning Over 5% of Sales in 1934 with 1933 data for comparison, and ending with the words, "Tires and Automobile Accessories, 12.2—0.1."

The Court: Received.

Mr. Doherty: On page 16 we offer in evidence, reading "Departmental Results of Department Stores with Annual Sales over $10,000,000," and under that caption the table on page 18, beginning with the words "Departments With Profits over 5%," and ending with the words "Candy, 8.04—4.0."

The Court: Received.

Mr. Doherty: Offer in evidence from Plaintiff's Exhibit P, on page 18 the caption "Departmental Results of [fol. 377] Specialty Stores With Annual Sales over $500,000," and the table on page 20 beginning with the words, "Departments Showing Earnings Over 4% of Sales in 1934 with 1933 data for comparison," and ending with the word "Toys—4.2."

The Court: Received.

William J. Eiden, sworn on behalf of plaintiffs, testified.

Examined by Mr. Doherty:

Q. You reside in St. Paul?

A. Yes.

Q. What is your busines?

A. Secretary-Treasurer and Comptroller of the Golden Rule.

Q. How long have you occupied that position?

A. Approximately seven years.

Q. What are your duties in connection with that position?

A. Well, naturally as an officer of the company, the regular corporate duties of a secretary and as treasurer, I have the financial responsibility and as comptroller, responsibility for compilation of all statements and records and detailed accounting and all system work and control throughout the store.

Q. Are you the head of the book-keeping and accounting department?

A. Yes.

Q. And all books and records of that department are kept under your supervision?

A. Yes, absolutely.

[fol. 378] Q. I show you Plaintiffs' Exhibit Q and ask you what that is?

A. Operating summary of operations of Golden Rule from 1929 to 1934 inclusive.

Q. Are the books of account of the Rule kept under your supervision?

A. Yes.

Q. Was the work done on those books, done by employees whose work it is to assist in the book-keeping?

A. Yes.

Q. And are those books and records truly and correctly kept to the best of your knowledge and belief?

A. Yes.

Q. What books and record were involved in the compilation of Plaintiffs' Exhibit Q?

A. Due to the complicated method of accounting used in the retail business, there are a great many records that tie into a private or general ledger. There are a number of subsidiary records and the information which goes into the subsidiary records is taken from various types of posting mediums, a great many of which are small tickets running from three to five inches in size and in our particular store, run into millions of these tickets in a years time.

Q. So the volume of records supporting this statement would be very large?

A. Yes.

Q. What personal knowledge have you of this compilation, Exhibit Q?

[fol. 379] A. A great many of the figures on this summary are checked by me personally daily, some weekly and others monthly. The principal figures such as sales are checked daily, the operating expenses are checked by me in some instances weekly, but most of them are covered in detail at least once a month, fifty to seventy-five percent at least once a week, so I am familiar weekly with what is happening with respect to expense as compared to sales.

Q. So from your general knowledge of operating results of the store as you go along, would you be able to say that the statement is approximately correct as to the volume of sales and ratio of profit shown?

A. I would.

Q. And is the statement, Exhibit Q, a true and correct statement of what it purports to show according to your best knowledge and belief?

A. Yes, sir.

Mr. Doherty: Offer in evidence Plaintiffs' Exhibit Q.

Cross-examination.

By Mr. Orfield:

Q. Are you familiar with the methods by which your company arranges for money and credit?

A. Yes.

Q. Do you sometimes arrange to get credit from the parent company?

A. Yes.

Q. Will you state to what extent the parent company, in [fol. 380] the maximum, has extended credit to your company?

A. I believe about a quarter of a million to $275,000, in that neighborhood. I don't believe I have passed $300,000.

Q. Will you state what rate of interest you pay to the parent company for the use of this money?

A. 5% I believe.

Q. Is that the rate at the present time?

A. Yes.

Q. Does the fact that you can get this credit of about $300,000 from the parent company enable you to take advantage of buying opportunities and cash discounts which you otherwise could not?

A. No, I don't believe so because we could borrow the money locally. We have borrowed money locally also.

Q. Why do you borrow money from the parent company if you can get it locally?

A. It so happens that the parent company has sufficient money at the present time so we can get it from them. It takes considerably less work to get it from the parent company than to borrow it from the bank.

Q. Do you have to put up collateral when you get it from the parent company?

A. No.

Q. When you get it from the bank, do you have to put up collateral?

A. We haven't borrowed money from the bank for some time, but I am sure we did not put up collateral the last time, except a note.

[fol. 381] Q. So it is more convenient to get it from the parent company?

A. Slightly.

Q. You do, as a matter of fact, get most of your money from the parent company?

A. Yes.

Q. When did you last borrow from the bank?

A. I believe the latter part of 1929 or early 1930. I am not positive about the date.

Q. What rate of percent did you pay to the bank at that time?

A. I don't recall.

Q. The parent company of your organization is the Allied Stores Incorporated?

A. Yes.

Mr. Orfield: That is all.

Redirect examination.

By Mr. Doherty:

Q. How is the rate of interest paid by you to the Allied Stores as compared with the current banking rate in St. Paul?

A. I am not sure, but I am positive it is higher than the local rates at this time.

Q. For loans of similar size?

A. Yes.

Recross-examination.

By Mr. Orfield:

Q. If it is true that you could get money cheaper from the banks, then is not the parent company imposing a burden on you in arranging for you to take this money? Couldn't you save money for your organization?

[fol. 382] A. I am not positive I could, but I believe I could. I believe the rate is lower in St. Paul at this time.

Q. Are you required by the parent company to use their money rather than the bank's money?

A. I couldn't answer that definitely, we just switched over. We never had a written instruction, "You must take our money." I don't know what the answer would be, I couldn't say.

Q. Would it be true that the parent company by virtue of the fact it owns the stock of your company, control these matters of borrowing policy?

A. Yes.

Recess until 2 P. M.

Q. We want the total of cash discounts starting with 1929 to 1935, the total of cash discounts as a separate item, total of quantity discounts and if there are any special rebates of the character given by the Atlantic and Pacific, we want those separate. In preparing this statement which is now being offered in evidence, was all of the calculating which entered into the determination of these figures done by yourself personally or did you have the assistance of others?

A. I had some assistance.

Q. Was a considerable part of the calculating done by your assistants?

A. The preparation of the accumulation of figures which went to make up those figures, a considerable part was done by others, yes.

Q. It would be true then, would it not, that as far as the various items that go into this statement are concerned, [fol. 383] they depend of their correctness on the work of others, so you cannot say of your own knowledge that they are true?

A. Yes, I can.

Q. How can you say that of your own knowledge if the work of others enters into the preparation of the statement?

A. Because I am working every day with those figures and I am familiar with the daily business. As a result there could not be any material discrepancy which would not come to my knowledge or attention.

Q. But this is a summary statement, is it not, made up of other items in your books and there appears to be no definite tie-up between this statement and the figures in your books. Do I understand you to say in working out this summary from the books, a considerable portion of the work has been done by others?

A. That is right.

Q. Do outside accountants make a yearly examination of the books of your corporation?

A. Yes.

Q. Is that a part of your permanent records?

A. Yes.

Q. Is that true for each year?

A. Yes.

Q. May we ask that the annual statements as certified to by outside accountants for the last ten years be introduced in evidence here?

A. They are in our central office.

Q. Do you have copies here?

[fol. 384] A. No.

Q. Can you get those statements?

A. I presume I can get them from our central office.

Mr. Orfield: We are requesting that they be obtained and and introduced in evidence here.

Mr. Doherty: I don't think it is necessary to go to all that trouble.

Q. Are these annual statements a public record open to the public generally?

A. Not of the individual stores, but they are of the combined stores. The Allied Stores Corporation figures are available to the public.

Q. Have you occasion to submit financial statements to banks in connection with the making of loans?

A. No, we have not in recent years.

Q. When did you last submit such a statement?

A. I don't recall any having been submitted by the Golden Rule since I have been there.

Q. In the statement submitted, you have an item reading, "Net profit or loss for fiscal year ending January 31st," and columns reading from 1929 to 1934 inclusive. Taking the 1934 column, does that column mean for the fiscal year ending January 31, 1934?

A. No, January 31, 1935.

Q. So this statement carries your business to January, 1935?

A. Yes.

Q. Is your statement for the fiscal year ending January 31, 1936 available?

[fol. 385] A. Yes.

Q. Could that be presented here?

A. Yes.

Q. Do you recall the amount of net profit net loss shown by that statement?

A. I think I have the approximate figure in my pocket here. There was a loss of $34,800 approximately.

Mr. Orfield: Object to the introduction of Exhibit Q on the ground it is immaterial in that it is seeking to establish a profit or loss and the amount of it and that this case does not depend upon whether plaintiffs did or did not make a profit or loss, the present tax not being a tax on net income or based on the amount of net income. It is objected to as no foundation laid in that the books from which it is assumed to be prepared are not in court and that this statement depends for its correctness on facts found in those books which are not in court. It is further objected to as hearsay and the further objection, even if otherwise acceptable, it is incomplete, enters into no details with reference to such matters as cost of sales and operating expense and even if the State should avail itself of the opportunity granted by this Court to examine plaintiff's books, it would be very, very difficult to check the various items from this statement which is so general in character and we ask the privilege of calling an accountant with reference to the character of this statement before the Court rules on the objection to the exhibit.

[fol. 386] Mr. Doherty: This statement has been in the hands of the Attorney General for the past 60 days with the invitation to avail themselves of the opportunity to examine the books and records and that has not been taken advantage of. I think the statement is amply detailed for the purpose for which it is offered.

By Mr. Doherty:

Q. Is it a part of your duties as comptroller of the company to keep your fingers on the sales and profits of the company from day to day, week to week, month to month and year to year?

A. Yes.

Q. And have you a current running knowledge of all those factors all the time?

A. I have a current running knowledge of daily sales, expense in loss accounts daily and some weekly, a weekly run-

ning record of the cost of sales. That is placed on my desk and is checked weekly.

Q. From that knowledge you have gained from day to day and week to week and from the examination of the books which was made necessary in connection with the preparation of this statement, are you able to say that the figures of net sales and the figures on gross sales with reference to net profit are approximately correct?

A. They are.

Mr. Orfield: We renew the objection.

(Argument by counsel.)

The Court: Do I understand this takes in the taxes, are they charged to the operating expense?

[fol. 387] A. General taxes are included but the chain store taxes are not included.

Q. You spoke this morning about the Golden Rule making certain loans from Allied Stores Corporation. Can you give us an idea how much of that business there has been since the Allied took over the stock of the Golden Rule?

A. Answering generally, I would say in the fall of the year, the loans would start at approximately $50,000 and they averaged about $175,000 over a period of three, four months and then gradually paid off, being completely liquidated about the middle to the end of February, possibly the first of March and then go back for money again in the following fall.

Q. Has that occurred practically every fall?

A. Practically but this year we were unable to liquidate the entire amount of our fall loan up to this time.

Q. Has the Rule loaned any money to the Allied Stores Corporation?

A. Yes.

Q. And how does the money loaned to them by the Rule compare with the money borrowed from them by the Golden Rule?

A. My recollection would be that the average amount borrowed from the Allied Stores was smaller than the average amount loaned by the Golden Rule to the Allied Stores.

Q. What rate of interest has the Allied Stores paid the Rule?

A. 5%.

[fol. 388] Q. Which do you think has paid over this period of years the most interest, Golden Rule or Allied Stores?

A. Allied Stores Corporation.

Q. What other payments has the Rule made to the Allied Stores Corporation over these years?

A. We make one payment for auditing service which is $3,000 a year.

Q. And for that you get what?

A. We get the services of the special accountants who make the annual audit.

Q. Are they paid on the company's behalf for such service?

A. Yes, they are paid for such service. We pay the central office and they in turn pay the public accountants for that service.

Q. You pay the Allied Stores the same amount they pay the accountants?

A. That I could not be sure about.

Q. Do you know whether the amount you pay for the services of these auditors is the ordinary and reasonable value of the service you receive?

A. I would say yes.

Q. What other payments have they made to the Allied Stores?

A. We make payment for the general service they give us which Mr. Roth stated yesterday covered the various services they render us.

Q. What is that?

A. Approximately one-half of one percent of the Rule's sales.

Q. Have there been any other payments?

[fol. 389] A. I don't recall any other payments.

Q. Does the Golden Rule pay anything toward the salary of the officers of the Allied Stores Incorporated unless it be included in the one-half of one percent?

A. No, I suppose one-half of one percent is supposed to cover that, but we do not pay anything separate from that.

Q. Or for any other purpose?

A. No, sir.

Mr. Doherty: That is all.

By Mr. Orfield:

Q. You state your corporation pays one-half of one percent of sales for general service rendered by Allied Stores

Incorporated. Have you any knowledge what it costs the Allied Stores Incorporated to render that service?

A. I understand it costs approximately one-half of one percent. My understanding is this is based on the actual cost of operation in the central office.

Q. The central office does not make a profit on the service charge?

A. That is my understanding.

Q. Do you know that to be a fact?

A. No, I do not.

Q. Were you with the present corporation before it became affiliated with Allied Stores?

A. No.

Q. Do you know whether before such an affiliation there was any payment made to any outside corporation for services similar to those now rendered to you by Allied Stores Incorporated?

[fol. 390] A. Yes, I do know.

Q. What was the cost of that service?

A. I think it was approximately three-tenths of one percent, possibly a little over.

Q. And now you are paying two-tenths of one percent more?

A. Yes.

Q. Are you deriving greater benefits now?

A. Yes.

Q. Are you deriving more than two-tenths percent greater benefits now?

A. That would be very hard to measure, I think we are getting just about what we are paying for in additional service.

Q. You set forth certain payments made to the Allied Stores Corporation. Are those all the payments made?

A. The two I named.

Q. Do you know positively those are all the payments made?

A. Yes.

Mr. Orfield: That is all.

Mr. Doherty: We have here an operating statement for the Rule which contains a great deal more detail. I would be glad to submit this to counsel for the purpose of their inspection and examination if they desire it.

The Court: I am inclined to think if it is an important element in this case, the question of losses shown on Exhibit Q, probably they ought to have the right of checking up the condition of the business as charged against operating expense.

[fol. 391] Mr. Doherty: I show you Plaintiff's Exhibits R, S and T and ask you what they are?

A. Operating statements of the Golden Rule for the years 1929 to 1934 inclusive.

Mr. Doherty: Are these in the regular form of the Rule's reports each month?

A. There is a monthly and accumulative report and this reports the twelve months accumulation.

Mr. Doherty: As of the last month of the fiscal year?

A. Yes.

Mr. Doherty: We will submit to counsel for the State for examination and as a basis for any further inquiry they may care to make of the witnesses, Plaintiffs' Exhibits R, S and T.

Mr. Orfield: Would it be practical for you to submit a balance sheet for the beginning and end of each fiscal year covering the same period as this statement, which would tie this statement into the general accounting system of your company?

A. Yes, there is the element of time, but it is practical to do it.

Mr. Orfield: The State would like to have such a statement presented if this statement is permitted to go into evidence. It should be accompanied by such a statement to tie this into the general accounting system of the company.

Witness: Would you want it in greater detail?

Mr. Orfield: We want a summarized balance sheet but in greater detail than Plaintiff's Exhibit Q, the ordinary form that a public accountant would render.

[fol. 392] Witness: We have balance sheets, detailed balance sheets at the store.

Mr. Orfield: We ask that such balance sheets be submitted in evidence if Plaintiffs' Exhibit Q is to be received in evidence.

Mr. Orfield: That is all.

PROF. PAUL D. CONVERSE, sworn on behalf of plaintiffs, testified.

Examined by Mr. Doherty:

Q. Where do you live?

A. Urbana, Illinois.

Q. What is your occupation?

A. Professor of marketing in the University of Illinois.

Q. How long have you been in that employment?

A. This is my twelfth year.

Q. Tell us briefly what your education has been and what your experience has been in the economic lines and in line with your University work?

A. I began studying marketing in 1915 as graduate student in Wisconsin when the chain store subject came up and have been studying that ever since. I attended the University of Pennsylvania from 1915 to 1924, from 1917 to 1919 I was in research work with the Federal Trade Commission and had charge of the investigating of wholesale grocers and food brokers in New York City and charge of the investigation of the Middle West Canners Association. I was in the study of perishable food in Philadelphia and [fol. 393] was in charge of the retail division of farm implements which had to do with the compilation of costs and profits from rural dealers; then was in charge of other investigations and since that time I have been called in as consultant by Commonwealth-Edison Company, National Retail Hardware Association and during a period of 1934 I was on leave from the university as special expert, studying marketing and distribution. During all those 21 years I have been interested in the study of marketing including the study of retailing, retail and chain stores. One year I was president of the National Association of Teachers on marketing.

Q. Have you written anything in your field?

A. Yes, I have written five books, outside of the one now in press and many articles, too numerous to mention.

Q. What are the subjects of the books?

A. They all deal with some aspect of marketing, selling policy and distribution.

Q. Has your study over these 21 years included generally the subject of retail distribution?

A. Yes.

Q. And sales and profits?

A. Yes.

Q. From the standpoint of those generally engaged in that field?

A. Yes.

Q. Has it also included a study of the so-called volunteer chains?

A. Yes.

Q. Co-operative chains?

[fol. 394] A. Yes.

Q. I think I will ask you first to give us some review of the development of the so-called co-operative chains. We will call them volunteers as that is the term that has been used so far in the evidence.

A. Some of them started back in the last century, 1870, 1880, but they have had their chief growth since 1920. There are two types. The wholesale type has been described here as I. G. A. where the initiative is taken by the wholesaler, the wholesale grocer takes the lead and organizes his group of retailers which he sponsors. The initiative is taken by the wholesaler and he organizes a group of which he becomes the supply warehouse. In the retail, the initative is taken by the retailer where you get together and organize the warehouse which they operate through a hired manager. That is a typical set-up.

Q. In what lines has the volunteer chain development been mainly?

A. It has been largest in the grocery line. It has had some growth in hardware, drugs and variety field, but the largest is in the grocery line. My understanding is that there are about twice as many retail groceries in volunteer chains as the corporate or ownership chains, about twice as many stores.

Q. What about the group of volunteer chains in the last decade?

A. It has been growing much more rapidly in the grocery field than the corporate chain.

[fol. 395] Q. Can you give us any recent figures as to the number of chains or stores conducted by volunteer chains in the United States?

A. The last figure by the American Institute of Food Distribution, Incorporated was something over 104,000 retail stores in the grocery field.

Q. Do you remember how many chains?

A. It is something like fifty-some thousand.

Q. Has the development of the volunteer chain been country-wide or confined to any particular sections of the country?

A. It has been pretty general throughout the country, it has not been confined to any one section.

Q. You have in mind Professor, the defining of chains under the Minnesota law as including all concerns conducting two or more stores, owning or operating two or more stores. What is your opinion whether the chain stores as defined under the Minnesota Act, have any business advantage over independent stores?

A. No, they have none, because the chain store might be a very small chain, two to five.

Q. Supposing you confine the comparison to large chains as compared with independents having a smaller volume of business, if the chain were large and the independent were small and if the independent were not in a volunteer?

A. Presumably the chain would have certain advantages in quantity buying, integration and some things like that, division of labor, or they could employ specialists.

[fol. 396] Q. Would the independent have any advantage over the large chain?

A. Yes, he would have the advantage of direct personal contact with his customers. He does not have the cost of overhead and supervision the chain has. He often has a location more convenient to his customers, he often has the benefit of favorable public opinion. He has greater flexibility in selecting merchandise adapted to the needs of his independent community and that is quite an advantage, also in granting credit, knowing the people who are worthy of credit, knowing how to distribute his advertising. It is a personal store, so the small independent does have several decided advantages.

Q. Is there any disposition of a certain element of people to patronize independently owned stores held by the feeling it is a home industry?

A. I think there is some, particularly a few years ago when there was this radio campaign against the chains. Many people feel they prefer to patronize their own home industry and I have talked to many chain store people who thought they were at a disadvantage in that respect.

Q. Can you say or do you think it can be said where the balance of the advantage lies, taking in the advantages and disadvantages on both sides, in favor of the chain or indepent? I am talking about large chains.

A. I don't want to go on record,—there are advantages both ways. It would be just a guess on which side the balance fell.

[fol. 397] Q. What is the fact in respect to a comparison between the volunteer and ownership chain in respect to which has the greater advantage, if either does?

A. The volunteer chain has the same method of buying through the warehouse. The retail cuts out the wholesale salesman. That is one advantage that the corporate grocery chain has had in that it eliminated the wholesale salesman. Many of these volunteer chains have eliminated salesmen and have simply a few supervisors and that puts the operating of the wholesale warehouse on substantially the same basis as the warehouse of the chain store. The volunteer has the same advertising as the chain has, the use of week-end specials and with twenty to forty in a town, can advertise just as economically as the chain can. Those two advantages the volunteer have, so to all practical intents the volunteer can do practically what the ownership chain does.

Q. The buying advantage which comes with volume, is that an unlimited advantage or has it limitations?

A. It generaly has considerable limitations because the chain do not buy through their central office but the warehouse does a considerable extent of their buying and if you take the chain in a small city in the point of perishables, they are very often bought locally from the same people the independents in the town buy from and they are not willing to give the chains any advantage as far as I have been able to find. The packing houses will not be [fol. 398] given advantage in buying fresh meats and very little advantage in the small towns in buying fruits and vegetables and the fact that the big chains have decentralized their buying indicates they are very definitely limited.

Q. What effect, if any, has the increased volume of business on a store from the ratio of expense in the operation? The ratio of expense to gross sales?

A. The percentage of expense to gross sales increases, that is after leaving the very small stores. After passing a $20,000 volume, it goes down at first, but after passing twenty to thirty thousand, it goes up.

Q. Is there any relation between volume of sales and ratio of net profit?

A. There does not seem to be any as far as I can find out, there is no particular trend either way.

Q. What is the fact whether there is a wide variation between the average ratio of profit in one line of business as compared with another?

A. You mean average operating profit in percent of sales. That varies considerably. In retail furniture and jewelry stores, if you take the percentage of profit without including interest on capital expenses, you find in normal years it will be about six to nine percent, whereas in groceries, it will be from one to three percent and in hardware and departments, shoes and clothing stores it will be normally about three to four percent. Of course those percentages vary with the business cycle, and I am speaking now of [fol. 399] 1922 to 1929 because in the war period and in the depression, those percentages would not hold.

Q. Would you find very much greater uniformity?

A. No, because in 1921, your jewelry stores lost ten to eleven percent and grocery stores managed to keep on earning a little profit.

Q. Would you think the grocery profit from 1930 on or 1929, exclusive of 1929, would average as much as one to three percent up to now?

A. I haven't seen any figures for the retail grocers during that period for the country as a whole.

Q. Would you expect them to be more or less?

A. They probably would have been less, because they had to take some inventory losses. I don't know whether as a whole they managed to stay in the black during that period, but you would expect their ratio would be cut down.

Q. What is the fact whether there is a wide variation from one year to another in the average ratio of net profit in a particular line of business, retail business I am talking about?

A. As I indicated a moment ago, it varies very materially. Do you want me to explain why?

Q. Perhaps the explanation would help some.

A. The main factor is the change in commodity price. During the period of rising prices, percentage of net profit increases. During the period of falling prices, percentage of net profit goes the other way and that is the main factor.

Of course the business cycle will affect different trades definitely from one year to another.

[fol. 400] Q. As to whether or not there is a wide variation in the net profit percent on gross sales earned by one concern as compared with another concern?

A. That is the widest comparison, two stores similarly situated, doing the same business in the same town and you will find wide variations. That is the biggest factor in the whole set-up.

Q. How about the camparison between any independent concern from one year to the other?

A. As far as any information I have, it indicates it changes very considerably. The same store will lose money one year and make money the next. The percentage of profit will vary widely and sometimes go into a loss over a period of years.

Q. What has been the general trend of profits in the chain store lines from 1923 to the present time?

A. It has been downward.

Q. Pretty steadily?

A. Yes, and it was even down between 1922 and 1928, which was presumed to be normal years.

Q. In the meantime, what has happened to the gross volume done by the chains?

A. It has been increasing rapidly.

Q. Is there any relation between the number of stores in a chain and the ratio of its net profit to gross sales?

A. There does not seem to be any particularly marked relationship. In some years the middle-sized chain, between ten and 50 stores show they made a smaller percentage of profit than do the others, but I don't think we could generalize there very much.

[fol. 401] Q. Suppose we take for comparison one chain doing,—let us say five million dollars worth of business in 50 stores and compare that with another chain doing five million dollars worth of business in 150 stores. Would there be any advantage in the chain having the larger number of stores doing the same volume of business?

A. I don't want to make any such generalization.

Q. Is there anything in the idea that the larger number of stores have any advantage?

A. No, in some cases they have the lowest.

Q. Take a single store doing $50,000 worth of business and five doing $50,000 in each store, would there be any

advantage in favor of the concern having its business scattered in five stores?

A. I don't think there is any basis for such a statement of that kind. I don't think there is any data on which we can make any such generalization.

Mr. Doherty: That is all.

Cross-examination.

By. Mr. Orfield:

Q. Do you recall what percentage of the total sales of merchandise were made through chain stores in 1929?

A. I am poor on remembering figures. The figures are available. As I recall it was between 25 and 30%.

Q. Do you remember how that percentage compares with the amount in 1933?

[fol. 402] A. The percentage increased in 1933.

Q. Is it likewise true that the percentage of sales by independents in those four years decreased from 1929 to 1933?

A. Yes, the independents decreased in percentage as the chains increased.

Q. And their variation was about five percent?

Q. Would the fact that the chains were gaining and independents were losing ground during those four years, tend to indicate that the chains had an advantage in their method of doing business?

A. I suppose it would indicate that the public felt they had an advantage. It might have indicated that people wanted to economize and pay cash and carry their stock home. Of course the chains have had their biggest growth in necessities and during the depression, we curtailed things that were not absolutely necessary. Chains were going big in things that had to be bought while independents were going back in automobiles, lumber, furniture, etc.

Q. You spoke about the total sales of chains going downward from 1929 to 1933, in spite of the fact that their volume increased. How do you account for that?

A. There are two explanations, increased competition between different chains and increased competition between chains and independents and the third would be as the business becomes larger, its expense increases. There is some support for the proposition that retailing is a business of increasing cost.

[fol. 403] Is it not true that the sales of independents fell more than the sales of chains during 1929 to 1933?

A. Yes, I stated that.

Q. And that fact of the fall in amount was largely accounted for by reason of the fact that the price of all goods fell during that period?

A. I don't recall the figure, but I made an estimate how much was due to decline in volume and how much in decline in price. The point is during the period of the depression, the customers ate about as much and wore as much and burned as much gasoline and cigars. Those things are constant. The fall comes in building material,—we didn't build, in automobiles and furniture. We can make the old furniture last and jewelry we didn't have to have and the decline in retail business came in those durable goods, so the decline was due both to falling in price and in the actual volume of goods sold.

Q. I take it you are familiar with the buying methods of independents and chains. Have you made any estimate as to the saving effected by the chains by reason of their large scale buying as compared to independents?

A. Speaking of groceries or what?

Q. Would not there be some general rule?

A. You have to divide your goods into possible and convenient goods.

A. All right, make some division; let's take groceries. The chain store sets up its own wholesale warehouse and the independent buys through an independent wholesaler. The [fol. 404] old type grocer normally has expense around nine percent for wholesale distribution. The chain store warehouse has a considerably lower expense, possibly five percent lower. If the independent buys through the service grocerman, naturally he is handicapped five percent, but the independent can buy through the cash and carry who have had a big development and operate at almost as low a cost as the chain warehouse and buying in that way, that is without forming any kind of a buying club, the independent retailer can buy on substantially the same basis as the chain.

Q. What percentage of the total buying of the independents is through this cash and carry jobber?

A. I don't know of any such figure.

Q. Would it be a considerable percentage of the total?

A. The census is the only basis and the census classifies

business where more than 50% of its business was done. I would not be able to say definitely.

Q. However, it would be true, would it not that of the total purchases made by independents, very much less than half is done by cash and carry?

A. You have another type of wholesaler who operates at about the same expense.

Q. That is not the question.

A. I cannot answer that. That would be just a guess.

[fol. 405] Recess for fifteen minutes.

Q. Referring to the matter of quantity buying, is it true that the chain stores with large buying power are able to effect a saving of considerable amount by reason of the fact they can buy in large quantities?

A. Well, whether it is due to large quantities, part of it is due to cash discount.

Q. Would there be a considerable saving on that item alone?

A. I couldn't answer that separately.

Q. Wouldn't you know for instance, whether or not there would be a considerable difference in the cost of soap for example, in carload or in lots smaller than carload lots?

A. I would not have the data on the individual items.

Q. Well, have you studied that matter enough to know whether as a general rule that is true?

A. We have the Federal Trade Commission report showing a saving, but it didn't show whether it was due to quantity buying.

Q. Would it be your idea there would be no saving in quantity buying as compared with the small store buying for himself?

A. The small store buys through the wholesaler. You cannot make that comparison, you have to compare things that can be compared.

Q. I know there is no uniform rule. I am asking you if it is not a general rule on the average, that the chain store with the ability to buy in carload lots could buy cheaper than [fol. 406] the small individual merchant who has to buy in less than carload lots?

A. We have to compare like with like and have to consider purchases from manufacturers who sell direct. As far as I am able to find out the meat packers do not give any substantial preference to the chain stores.

Q. Would you know whether the chain stores as a rule pay the cash discount?

A. I understand they take the cash discount.

Q. Would you know what the cash discount amounts to?

A. There are many different discounts, the common discount is two percent for ten days.

Q. Would it be true on the other hand that a considerable portion of the individual store keepers, independent store keepers are unable to take the cash discount?

A. That is the common assumption but I could not testify to that from my own experience.

Q. Is it the practice of the chains to maintain expert buyers to do the buying for them?

A. It is my understanding of it.

Q. Would that give them a considerable advantage in buying over stores so small they cannot maintain such experts?

A. There are so many factors to that I don't think I can give a 'yes or no' answer. There are so many conditions.

Q. Would not it be true that the small independent store operating alone could not maintain an expert buyer because it would cost too much for one store to do it?

[fol. 407] A. Presumably the merchant is an expert buyer, that is his job. He is supposed to be, he is a merchant.

Q. Would you have an opinion as to whether the independent small merchant would be an expert buyer comparable to the man buying for the department stores?

A. I can answer that the way I teach it and that is, the wholesaler is the expert buyer for the independent and the warehouse for the chain stores.

Q. But the wholesaler makes a profit on the transaction?

A. Yes.

Q. And the chain store warehouse buyer does not make any profit on that particular transaction?

A. They try to, they certainly are not in business for pleasure.

Q. But is it not a fact a saving is afforded by the chain stores by reason of their greater skill in buying?

A. You have to compare the chain stores with the wholesaler before you can make a generalization, if you are talking about groceries. If you compare chain store with department store, he might be just as shrewd. You have to compare like with like. The small chain does not have any

advantage over the small independent. I don't see where there is any advantage.

Q. Is there not an advantage in buying power in a small chain of five to ten units and the independent?

[fol. 408] A. There may and may not be.

Q. Generally speaking would not there be?

A. I would not say you can generalize that way, it depends on the facts in the individual case.

Q. It is customary for chains to distribute their merchandise through central warehouses?

A. That is for the chains handling convenience goods only, not the other chains.

Q. Would there be a saving afforded by that system of distributing the goods as compared to the system followed by the independent store?

A. That again is a construction of operating of chain store warehousing with independent wholesaler and the answer depends on what type of wholesaler you are talking about. If you talk about cash and carry wholesaler it is one thing and if you are talking about service wholesaler it is another thing. You cannot make a general comparison.

Q. Is it not true that the chains effect a saving when they have a central warehouse from which they can distribute to some 50 to 100 stores, as compared to the independent store in the same city?

A. The independent wholesaler——

Q. No, the independent store.

A. That question cannot be answered, you cannot make such a comparison. You have to compare the chain store with the independent wholesaler. The independent retail grocer does not do any warehousing.

Q. Does not the independent retail grocer suffer a com-[fol. 409] parative loss as compared to the chain store with which he competes by reason of the fact that central warehousing is available to the chain store and central warehousing is not available to the individual independent grocer?

A. But it is available through the wholesaler, you have to make that comparison.

Q. Is it not true that it costs more to provide central warehousing by means of wholesale house warehousing, than it costs to provide it by the chain store method?

A. That depends on two, three factors.

Q. I am speaking now of the independent store, not of the volunteer chain.

A. It depends on the type of wholesaler you are speaking of. If you compare the cash and carry wholesaler and if you compare the service wholesaler, that would probably be true.

Q. And the service wholesaler does include a large percent of the business?

A. If you include the volunteer it does. I don't know how many are not included now.

Q. Are you familiar with the comparative speed of turnover of the chain store and the independent store?

A. Independent retailer?

Q. Yes.

A. I would imagine in making that comparison I would say generally the retailer would have a slightly higher turnover.

Q. Is it your idea if we take a National Tea grocery store and an independent grocery store, that the turnover of the [fol. 410] National Tea would be slower than of the independent?

A. I don't have the figures for the National Tea in mind. Using that as a type?

Q. Yes.

A. I amagine the independent would have a somewhat higher turnover.

Q. Have you studied that?

A. Yes, I have studied that.

Q. Would you know how they do compare?

A. No, I don't recall the exact figures.

Q. In the matter of advertising, is it not true that the chain store would effect a saving as compared to the independent store not affiliated with a volunteer chain, speaking of groceries?

A. As a rule the little independent grocer does not advertise so he would not have as much expense as the chain.

Q. Would it be your idea that the chain profits by reason of its advertising?

A. I believe so. That question involves more than I realize when I gave my first answer. Do you want me to go into that?

Q. Just give me a brief answer whether the chains profit by reason of advertising?

A. If you go back before the World war the chains didn't advertise, that came in around 1919 or 1920 and presumably

by reason of the competition with one chain and another. If a chain did not advertise now, it would be handicapped.

Q. We are taking conditions as they are now. It is your thought that the chains at the present time profit by reason of advertising?

[fol. 411] A. Yes.

Q. And you stated that the independent store cannot advertise?

A. Not in the newspaper, I am speaking of, not in the volunteer.

Q. Are you familiar with the policy of the chain store with reference to whether their equipment is standard, one store having substantially the same fixtures and other equipment as other stores in the same chain?

A. They vary, some have standardized equipment to some extent.

Q. Is there an advantage in standardized equipment?

A. There may be a disadvantage or an advantage. Its disadvantage is it is inflexible. If a chain standardizes and the psychology of the store changes, then they have all the expense of changing it. There is that disadvantage. I think there is some advantage if you get good system and put it in different stores.

Q. On what would you say there was an advantage in standard equipment?

A. It would be pretty hard to make a generalization there. The chains have done so much experimenting themselves, apparently they have not reached any particular conclusion on it.

Q. Are you familiar with the chain store policy of 'loss leaders?'

A. Yes, to some extent.

Q. What do they hope to accomplish by using loss leaders?

[fol. 412] A. We must define what a loss leader is. One definition of a loss leader is an article which is sold at less than the merchant paid for it.

Q. What is the purpose of using that policy of loss leaders?

A. The idea is to attract customers to your store hoping they will buy something else.

Q. Is it sometimes used in order to eliminate competition?

A. Well, I have read of anti-trust cases where it was true.

Q. Have you made a study of rebates in connection with chain stores?

A. Not personally.

Q. From your study, do you know whether rebates are often given to chain stores?

A. Let's define what we mean by rebates. That term is used in many different meanings.

Q. I am using it in the sense of a discount in addition to the usual cash discount given to the trade generally and in addition to the usual quantity discount given to the trade generally. In other words, an extra discount arranged by agreement between the chain stores and the seller?

A. I would have only hearsay evidence there.

Q. Are you familiar with the evidence introduced to the effect that the Atlantic and Pacific Tea Company got a six million dollar rebate in one year?

A. I didn't know it was a rebate, that figure was in the press. That included all kinds of allowances, but it made no distinction between those open to all and those which were [fol. 413] special to the Atlantic and Pacific. I never saw any distinction made in anything published.

Q. Have you in your study found where corresponding rebates are given to chains?

A. I don't think I have any data on that.

Q. Would it be true generally, that chain stores have comparatively abundant capital for operating their stores?

A. Not chains as defined in the Minnesota statute, because that is two or more stores and that is the little fellow who just opened up another store.

Q. Would it be true of the larger chains?

A. I think generally speaking of the larger chains.

Q. Would the fact that the large chains have more capital give them an advantage over their competitors who do not have abundant capital?

A. Naturally. If one has capital and the other has not, it is obvious that the one with capital has some advantage.

Q. Would it be true that the larger chains have an advantage in capital over the volunteer chains?

A. Well, I would only be guessing on that, that would be only a guess.

Q. You stated that from 1917 to 1929 there was a downward trend in the net profits of chains?

A. In the percentage of net profits.

Q. Was there a similar downward trend in the net profit of independent stores?

A. Apparently so.

Q. Was that downward trend just as large in the case of independents?

[fol. 414] A. I don't have the figures in mind, I would have to look them up.

Q. Is it true that many of the larger chains produce a considerable portion of goods they sell in their own factories?

A. That is true of certain types, such as candy and men's clothing.

Q. Would there be an advantage to such chains in the fact they do so produce their own goods?

A. That is a debatable point. I have spent many hours arguing it without getting a definite answer.

Q. Would it be true that volunteer chains do not pursue the policy of owning their factories?

A. Now since the chains have grown up, we would have to compare that with the grocery figures.

Q. Take the grocery figures for instance.

A. I understand some of the volunteers do some manufacturing but I don't have the figures in mind as to whether or not it is as much as the chains.

Q. Would it be true that the chains could pursue a freer purchasing policy by reason of the fact that they know more accurately the amount of sales they can make than the volunteer chains? I mean for instance,—if at a given time it appears that sugar can be bought advantageously, that their statistical department, knowing that the trend in the price of sugar is upward,—take a case where they could get a special discount by buying a very large amount, in such a case, would it be true that they would be freer to buy in [fol. 415] advance a larger quantities than a volunteer chain, because they can sell all of it, they can provide the entire needs of their stores, whereas the volunteer chain does not know the amount it can provide?

A. As you have stated the problem, I don't see any particular advantage to the chain.

Q. Are you familiar with the report of the chain stores made by the Federal Trade Commission in 1933?

A. I have read it but I don't remember the detailed figures.

Q. Is it your opinion that the data included in that report is reliable?

A. It is as reliable as figures can be.

Q. I find on page 13 of Exhibit L, this statement: "Eleven kinds of chains, which include several of the most important types, such as grocery, dollar-limit variety, drug and tobacco, show a tendency for the cost of merchandise percentages to decline with the increase in the size of the chain." Would you agree with that statement?

A. As I recall that study, I could not make any generalization. I imagine you are taking the statement out of its context.

Q. Are you acquainted with Charles H. March, chairman of the Federal Trade Commission?

A. No.

Q. Are you familiar with the character of his work?

A. I am familiar with the men who did work because three of them were my former students. I don't know the Com-[fol. 416] missioner, but I know the men who did the work and I can say they are good men.

Q. Reading now from page 15 of the same report:—"Considered from the standpoint of the size of chains, as measured by the number of stores, it is found that nine kinds of chains (grocery, grocery and meat, dollar-limit variety, dry goods and apparel, confectionery, women's shoes, men's and women's ready-to-wear, musical instruments, and general merchandise) show marked tendencies for the rate of net operating profits to sales to increase with increases in the size of the chain." Would you agree with that statement?

A. If that is what the statement says. I said I thought the men who did the work are good men.

Q. In your opinion the statement is reliable?

A. If that is a correct statement, I believe it is.

Q. Reading from page 16 of the same report,—"In five kinds of business (grocery, grocery and meat, confectionery, men's and women's ready-to-wear, and women's shoes), there is a tendency for the sales per store to decrease with the size of the chain (as measured by the number of stores) although the rate of net operating profit tends to increase." Do you agree with that statement?

A. I have no opinion on it, if you read the statement correct.

Q. The source of the information being this report, it is your opinion it states a fact?

(No answer.)

Mr. Orfield: That is all.

[fol. 417] Redirect examination.

By Mr. Doherty:

Q. On the question of loss leaders, do you know what the fact is with respect to whether the volunteer chains make a practice of using loss leaders?

A. They do. They often claim they use them to better advantage than the chains.

Q. Is the practice common among volunteer chains?

A. Very common.

Q. With respect to the question of the large chains having an abundance of capital and whether that is an advantage over the small independent. I suppose the chains needs a greater amount of capital than a small independent?

A. Yes.

Q. If the small independent has sufficient capital for the operation of the particular business, then has the large chain any advantage in the matter of capital over the small independent?

A. No, they could both take the cash discounts.

Q. All they both need is the amount of capital to operate their business?

A. Yes.

Q. And the amount necessary to operate their business?

A. Yes.

Mr. Doherty: That is all.

J. J. Bosiger, recalled.

Examined by Mr. Doherty:

Q. I show you Plaintiff's Exhibit E and ask you whether [fol. 418] since you were on the stand before, you have made a personal check of your records with respect to the correctness of that summary in regard to any particulars?

A. I have checked personally the years 1933 and 1934 in all respects as to calculations and figures and have checked the net sales, net profit and percent of net profit for all the years, 1923 to 1934 on this report.

Q. How long a time did that take?

A. That took me about seven hours.

Q. Would it take more or less time to check the older years in a similar fashion?

A. As you go back over the years, the older the figures are, the harder it is to check them.

Q. I will show you Plaintiff's Exhibit F and ask you whether since you were on the stand before you made any additional check of the figures on Exhibit F?

A. I checked the years 1933 and 1934, every one of them and checks the net sales, net profits and percent of net profit for all the years from 1923 to 1934 inclusive.

Q. Did you find any errors in the summary?

A. I found no errors.

Mr. Doherty: Re-offer in evidence Plaintiffs' Exhibit E and the corroboration, Plaintiffs' Exhibit F. E was received subject to the objection with the right of counsel for the State to ask any particular record they might want to examine which could be brought to court, but we haven't had the request for any such report.

[fol. 419] By Mr. Orfield:

Q. This report covers a period of twelve years, from 1923 to 1934?

A. Yes.

Q. Has your method of bookkeeping remained the same during that period?

A. It hasn't changed to any extent, perhaps classifications of accounts have become more numerous.

Q. Has your method of doing business generally remained about the same during that period?

A. Well, as far as I know it has.

Q. When did you first work for the National Tea?

A. In March, 1928.

Q. Have you worked with them elsewhere before?

A. In Chicago since 1920.

Q. Then you would be familiar with their method of doing business during all these years?

A. I would be somewhat familiar with it.

Mr. Rutchick: As far as the general way of doing business of the National Tea for Minnesota and your territory, the method of doing business in 1929, 1930, 1931, 1932, 1933, 1934, 1935 and up to 1936, in so far as warehousing, merchandising distributing, leasing of stores and all other methods, there has been no change since 1928?

A. I would say they are generally the same.

Mr. Rutchick: Is the system of mass purchases the same for the years following 1928 as when you were first there in 1920?

[fol. 420] A. I would say the same.

Mr. Rutchick: Is the same policy of seeking to avail itself of cash discounts continued after 1928 down to date, as when you first came there?

A. As far as I know, yes.

Mr. Orfield: Re-new objection to the introduction of Exhibits E and F on the ground they are immaterial, no sufficient foundation laid and hearsay.

Mr. Doherty: Exhibit E was already received subject to the objection that counsel may be allowed to ask for any records they desired to see. I would like to have Exhibit E received unconditionally at this time. Exhibit F is offered only in support of Exhibit E.

Mr. Orfield: We would like to make the same request of the National Tea Company as we have already made to the Allied Stores Corporation, that we be provided with balance sheets for the beginning and end of each year for the period covered by Exhibit E and the operating stores for the corresponding years.

Witness: I have them in court.

Mr. Orfield: Will you get them?

A. Yes.

The Court: Complying with that request, Exhibit F will be received and Exhibit E may be received without further objection.

By Mr. Doherty:

Q. I show you Plaintiffs' Exhibit V and ask you what that is?

A. That is a statement showing sales by the Minnesota [fol. 421] stores of the National Tea and the net profit earned in each, whether they are combination or straight grocery stores for the year 1935.

Q. Was that prepared under your supervision?

A. Yes, it was.

Q. But the actual work on this exhibit is not all yours?

A. None of it is actually mine.

Q. Who has personal knowledge of the accuracy of this statement?

A. My assistant in the office, Stanley Wallen.

Q. In arriving at the net profits of the individual stores in Minnesota, how is the expense of operation of the company allocated to the stores?

A. The direct expense incurred in each store is charged to that particular store and the overhead expense is distributed, prorated on two bases.

Q. What are the two bases?

A. The office and administrative expense and what we call overhead expense, which would be district manager's salary and expense, are distributed on the basis of sales as compared with total sales and the warehouse overhead is distributed on the basis of tonnage of merchandise moved out of the warehouse to the individual stores and the delivery expense is distributed to the stores on the basis of tonnage delivered to the individual stores.

Q. Mr. Bosiger, you gave some figures the other day on the question of number of stores in operation January and July 1, 1934. Do you wish to correct that?

[fol. 422] A. Yes, I said on January 20th there were 141 stores in operation and there were 142.

Q. The number you gave was allowing for the exempt store?

A. Yes, and July 1st there were 125 stores in operation, a difference of 17.

Q. And you testified the other day there were 124?

A. No, I testified 125.

Q. So there was only an error in the one store on January 20th?

A. Yes.

Q. What difference does that make in the tax paid?

A. $2,635 overpaid on the number of stores on July first.

Q. And I understand none of the money has been refunded by the State?

A. No, none has been refunded.

Q. So if the specific tax be valid, you have overpaid the State on account of specific tax of 1934, $2,635?

A. That is what we claim.

Q. Assuming the tax to be valid you have overpaid $2,635 for 1934?

A. If there is no question about our interpretation of the law.

Q. If the tax is computed on the basis of the number of stores in operation on July first you have overpaid $2,635?

A. Yes.

Q. How many stores did you have in operation January 1, 1935?

[fol. 423] A. 127.

Q. And how many did you pay on?

A. 127.

Q. And how many did you have in operation on July 1, 1935?

A. 122.

Q. So you paid on five more than the number in operation July 1, 1935?

A. Yes.

Q. What does that amount to?

A. $775.

Q. So if the specific tax be valid and the amount is to be determined on the number of stores in operation July first, you paid $775 excess?

A. Yes.

Q. Has any of that been refunded to you by the State?

A. No.

Q. Mr. Russell of Chicago was asked what percent of the purchases of the National Tea of Delaware was made through the Chicago headquarters. Can you give us the actual figures on that for the last year?

A. I don't have the actual figures, but it would be less than 10%. I know that for a fact.

Q. And 10% of the purchases was made through what office?

A. Through the Minneapolis office.

Q. From what class of people?

A. All classes of people. Directly from farmers, packing house, manufacturers and from all sources of supply.

[fol. 424] Q. But without going through the Chicago headquarters' office?

A. Yes.

Mr. Doherty: That is all.

Adjourn until 10 A. M. Tuesday.

Mr. Doherty: In the cross examination of the last witness, counsel read certain notations from Plaintiffs' Exhibit L, consisting of some observations made by Chairman March in transmitting that report to the senate. I think the matters referred to are covered by actual figures in evidence, but in view of the fact part of the reading has been made,

I would like to offer from Exhibit L the balance of the paragraphs not read from by counsel. I therefore offer from page XIII, two paragraphs:—"The classification of the various kinds of chains by the number of stores operated shows the percentage of cost of merchandise sold increasing as the size of the chain increases for ten kinds of chains; dry goods and apparel, men's and women's shoes, department store, men's shoes, men's ready-to-wear, hats and caps, dry goods, furniture, musical instruments, and general merchandise. Eleven kinds of chains, which include several of the most important types, such as grocery, dollar-limit variety, drug and tobacco, show a tendency for the cost of merchandise percentages to decline with the increase in the size of the chain, as measured by the number of stores.

"Five kinds of chains are classified as indeterminate (showing no upward or downward trend.) Included in these are the grocery and meat chains, both of which show [fol. 425] very stable cost percentages throughout all of the size groups."

Mr. Doherty: Then offer from page 14 and 15 all of the material under the caption "Net Operating profit," and offer from pages 16 and 17, all of the material under the caption "Influence of Size of Chains."

The Court: Received without objection.

Mr. Doherty: Offer in evidence Plaintiff's Exhibit W, a certified copy of a report of the United States Federal Trades Commission on the subject of chain stores, gross profit and average sales of stores of retail chains and offer from that exhibit, Table six on pages 16 and 17, Average sales per store for all chains reporting gross profits, by kind of chain, by years, 1909-1930.

The Court: Received without objection.

Mr. Doherty: Exhibit X is a certified copy of a report of the Bureau of Census of the United States entitled "Census of American Business, Retail Distribution, 1933, Stores and Sales by Size of Business." We offer in evidence certificate of the secretary of commerce and Table four on page 26, being State of Minnesota—Number of stores and sales, by size of store, by kinds of business.

The Court: Received.

STANLEY J. WALDLEN, sworn on behalf of plaintiffs, testified.

Examined by Mr. Doherty:

Q. You live in Minneapolis?
[fol. 426] A. I do.
Q. You are employed by the National Tea?
A. Yes.
Q. In what capacity?
A. Assistant accountant, assistant to Mr. Bosiger.
Q. How long have you occupied that position?
A. Since 1927.
Q. I show you Plaintiffs' Exhibit V, which was identified by Mr. Bosiger yesterday. Did you have something to do with the compilation of that?
A. Yes, I did. All the figures on this report have been checked back by myself personally.
Q. Against what immediate records?
A. Against our book called the store's Profit and Loss record.
Q. And is that a true and correct summary in accordance with that record?
A. Yes, it is to my personal knowledge.
Q. Have you that record with you?
A. Yes.
Q. Will you get the book?
A. Yes.

Mr. Doherty: Offer in evidence Plaintiffs' Exhibit V and in connection with the offer submit for examination by counsel for the State, the Store Profit and Loss record which is the record from which the exhibit is made up.

By Mr. Orfield:

Q. Will you state with reference to the item of depreciation. What is the basis on which you estimate depreciation?
[fol. 427] A. The basis is 10%.
Q. Explain that please?
A. A fixture is written off over ten years time and 10% would be written off every year naturally.
Q. What is the actual life of a fixture?
A. According to the Federal Government income tax division, ten years is the average life of a store fixture.

Q. According to your own experience, is that correct?

A. As far as I know, yes.

Q. Would you know?

A. I doubt if anyone could say that positively.

Q. Would that mean, assuming that the shelving in a store is average, that the shelving would have to be discarded or replaced at the end of every ten years?

A. Not necessarily, but repairs would enter into the improvement of that shelving.

Q. And would that be listed as an additional expense?

A. Undoubtedly that would. Yes, that would be listed as an additional expense.

Q. You stated the shelving might not wear out in ten years and you tried to explain it was proper to eliminate it in ten years because repairs would enter into it, but you stated further, repairs are listed as a separate item.

A. If such repairs were an improvement and increase the value of the fixture, that would be added to the cost of the fixture and set up as an asset, but if they were just [fol. 428] broken, that would be set off as repairs because the fixtures would be worth no more if they were repaired.

Q. Might it be true that the National Tea Company has just adopted 10% depreciation arbitrarily and that the average fixture does last longer than ten years?

A. As far as my understanding goes, that matter has been thrashed out between the U. S. Income tax division and the National Tea and they arrived at a satisfactory figure.

Q. And that is the basis used?

A. Yes, that is the basis used on all depreciation.

Q. When you secure the rental of a new store building, do you often remodel it?

A. I know nothing about that.

Q. Would you as an accountant know if remodeling costs are entered?

A. I would have an idea.

Q. Will you state under what items they are entered?

A. Remodeling costs are all charged off to repairs.

Q. Are they charged off to repairs for the current year?

A. They are.

Q. Then would it be true that when your company is acquiring a new store and remodeling it, that you are charging off against the current year remodeling expense of which you will have the advantage in succeeding years?

[fol. 429] A. I would say it is possible, yes.

Q. Wouldn't that happen, as a matter of course in every case?

A. Yes, it would.

Q. What is the average length of time you retain a store which you lease?

A. I don't know.

Q. Would it be as much as ten years?

A. No.

Q. Would it be as much as five years?

A. That is something I could not answer.

Q. It would be just a guess?

A. I would say it would run between one and three years.

Q. Do you list the sum total of repairs for a given year as one item in your book?

A. In the store record, yes.

Q. Is that book available?

A. You have that in your hand.

Q. Will you refer to the book and give me the total?

A. It isn't totalled but roughly it would be around $30,000.

Q. For Minnesota?

A. For the entire Delaware corporation.

The Court: Is that what this exhibit goes to?

Mr. Doherty: No, it is for the State of Minnesota only.

Q. About what portion of that $30,000 should properly be allocated to Minnesota?

A. That would have to be figured. Necessarily, the repairs outside of Minnesota would be more.

[fol. 430] Q. Is it not however true, that by far the greater portion of these repairs and remodeling expenses are outside of Minnesota?

A. The greater percent would be outside of Minnesota.

Q. What is the reason for that?

A. The reason would be we have opened more stores outside of Minnesota in that year than in Minnesota.

Q. Then would it be true, as far as that item of expense is concerned, if you were allocating expense by proportionate sales, it would be unfair to the Minnesota district?

A. It would be very unfair, but we don't allocate it that way.

Q. You list a number of items of office and administrative expense. Will you state the main items which enter into that total?

A. Well, I don't believe I could for the main items, but I could for several.

Q. What would they be?

A. The regular office pay roll, the buyer's salary, exchange charged by banks, depreciation on office furniture and equipment and in fact any of the regular accounting office expense.

The Court: It is the office overhead?

A. Yes.

Mr. Doherty: You mean the general offices in Minneapolis?

A. Yes.

Q. If you were to allocate that overhead to the four states in which you operate on a fair basis, what would be the basis of that allocation?

[fol. 431] A. In reference to the biggest percent of the sales, would be the fairest and most practical basis. Buyer's salary and expense is prorated according to their purchases from the Minneapolis warehouse.

Q. If you were doing pioneering work, establishing new stores in some of these states to a greater extent than others, would the overhead expense for office and administration be greater per unit of sale in connection with such pioneering work?

A. No, not that I know of.

Q. Would it not be true if you went into a state and opened many stores, that the sales for the first year or years would be smaller than after these stores were established?

A. It seems to work out just the reverse, but that is a guess too.

Q. In so far as it works out the reverse, would that be due to your policy of giving very low prices when you first open stores?

A. No, I don't think so, I think it is just a condition.

Mr. Orfield: We object to the introduction of this exhibit as incompetent, irrelevant and immaterial in that the present tax is not based on profit and loss.

The Court: It may be received.

Exception by defendant.

By Mr. Doherty:

Q. As I understand the reports of individual stores for the purpose of this statement, expense record are charged [fol. 432] to the individual stores. They are not prorated on any basis?

A. No, they are not prorated whatever.

Q. This matter of depreciation, you take 10% per year for fixtures. Is that the same percent you take in your income tax return?

A. Yes.

Q. And for how many years has that been the practice?

A. I don't recall how many years.

Q. And is that percentage allowed by the Government on your income tax return?

A. It is.

Q. Have you any knowledge whether that is the standard practice in relation to business concerns?

A. I don't know for sure, but I have heard in talking with other accountants that 10% is the standard.

Mr. Doherty: That is all.

Mr. Doherty: I now offer in evidence from Exhibit N. Table four on page 116 relating to operating expenses of filling station chains, also the first table on pages 138 and 139, which does not seem to have a table number, but deals with the operating expense of women's-apparel chains, the first table running across the top of both pages.

Mr. Orfield: As far as Table Four is concerned, we object on the ground that gasoline filling stations are not taxed under the law so that would be immaterial.

The Court: They may be received for what they are worth.

Exception by defendant.

Howard R. Malcolm, sworn on behalf of plaintiffs, testified.

Examined by Mr. Mitchell:

Q. Where do you live?

A. Minneapolis.

Q. What is your occupation?

A. Treasurer-comptroller of L. S. Donaldson Company.

Q. How long have you been with the Donaldson Company?

A. Almost 12 years.

Q. How long have you been treasurer and comptroller?

A. Comptroller the full time and treasurer for eight and one-half years.

Q. What do your duties include?

A. The financing, all accounting, store operation and service, some merchandising of the cost and service of about 20 departments. As director of course I am active in the management.

Q. Your duty includes supervision of these fields you have mentioned?

A. Yes.

Q. Do you have under your direct supervision the keeping of the accounts in the making up of financial statements of the corporation?

A. That is correct.

Q. As supervisor of store operations are you familiar with the run of the business?

A. Thoroughly.

Q. Then you are thoroughly familiar with the details of selling and retailing?

[fol. 434] A. Yes.

Q. As I understand it, the L. S. Donaldson Company is a Minnesota corporation?

A. It is.

Q. And all its stock is owned by the Allied Stores Corporation, formerly Hahn Department Stores?

A. Yes.

Q. When was the stock of L. S. Donaldson purchased by Hahn Department Stores?

A. The option was exercised to purchase the stock on November 27, 1928, and the actual transfer took place about a month later, in December. They took over the operation of the store on February 1, 1929.

Q. And as I understand it, you had been with the concern about four years at that time?

A. Yes.

Q. L. S. Donaldson Company operates a general department store business?

A. Yes.

Q. About how many departments do you have?

A. We have 119 selling departments.

Q. About how many lines of merchandise do you handle?

A. Just about that many, because the departments are broken down more or less by types and kinds of merchandise.

Q. And where each department will sell a great many different varieties of the same line?

A. Yes.

Q. Who are the officers?

[fol. 435] A. M. J. Dumphrey, President, R. F. Walsh, Vice-president. I am treasurer and M. H. Bofferding is secretary.

Q. And are the officers the general managing heads of the business?

A. Yes.

Q. I take it there is also a Board of Directors?

A. Yes.

Q. And is that body in direct control of the business?

A. Yes.

Q. Does Allied Stores Corporation exercise any direct control over the running of L. S. Donaldson Company?

A. Only indirectly.

Q. Will you explain how that is exercised?

A. In an advisory capacity.

Q. And what does that consist of?

A. Any decision rests with the officers of the company. Occasionally on some major item, major decision we would ask for counsel just like we would use our local retailer. I have in mind an example when the labor situation developed in the Twin Cities, we wanted all the advice of people in the same lines of trade who had experience in such situations.

Q. Have you ever had occasion to refer to the Allied Stores Corporation in that way while you have been with the business?

A. I think about the only way that comes up is when an officer comes to St. Paul. The President gets out here very [fol. 436] seldom over once a year and at that time we go over our problems and discuss them with him, but the decision rests with us.

Q. In other words, you don't feel yourself obligated to take the advice offered to you?

A. No, we can take or leave it, but the responsibility is ours.

Q. The Allied Stores maintains an advisory service for the various stores it owns?

A. Yes, you might call it a resident buying office which operates in the same manner as the Syndicate Trading Company did before the sale of the store to Allied Stores. They also furnish us with research statistical figures, sales and fashion ideas. Formerly we used to employ persons for that service such as Amos Parish.

Q. You mean before the Allied took over, Donaldsons?

A. Yes.

Q. What was the Syndicate Trading Company?

A. That was one of the first resident buying offices or associations formed some years ago. L. S. Donaldson was one of the original founders and incorporators of that service.

Q. What was the nature of that service in a general way?

A. The buyers in the market had a place to hang their hat and work in counsel with local representatives in the market all the time and contact conditions in New York City, what other buyers are interested in, what they feel is the type of merchandise and what lines are moving and what the demand will be.

[fol. 437] Q. Do you find any substantial difference between the service rendered to Donaldsons by the Syndicate and the service now rendered by Allied Stores Corporation?

A. I would say it is a little more complete. In the Syndicate we had no facilities for research work, statistical comparison. I might say the Dayton Company, in addition to their buying office, have their retail research for that purpose the same as we do.

Q. But you say you did resort to other sources for this statistical information and research before?

A. Yes, that it right.

Q. All in all, is the operation of your store today with respect to buying and matter of statistical information and advice, substantially different than what it was before Allied Stores purchased it?

A. No, except we had to employ several services where now we have but one.

Q. Does L. S. Donaldson Company maintain its own staff of buyers?

A. Yes.

Q. About how many have you?

A. In excess of 50. We call them department managers. Most of them make one or more trips to market during the year. Some of them, like a dress buyer, is in the market at least every three weeks.

Q. How much time do they spend in buying?

A. A notion buyer would not have more than two trips [fol. 438] to market. A dress buyer spends a week out of every month in the market, one-fourth of the year there.

Q. Do you do any buying directly through the Allied Stores buying office in New York?

A. Only on our buyer's office order, where they have sent a letter or wire confirming an order. There is no other exception.

Q. In other words, no purchases are made for Donaldson's through the New York office of Allied Stores Corporation, except on Donaldson's request?

A. Yes, that is correct.

Q. What proportion of your total orders do those orders constitute?

A. A very small percent.

Q. Under five percent?

A. That is more or less of guess, but it would be very small.

Q. What proportion of your total purchases are made in the New York district approximately?

A. I would say not over half. The reason I say that is because New York is a market primarily for ready-to-wear.

Q. Where is the other half of your purchases made?

A. Probably one-fourth is bought locally and 25% out of the local and New York market.

Q. What do you mean by locally?

A. Twin Cities and the State, primarily the Twin Cities and again primarily, Minneapolis.

Q. And the purchases made locally, or in areas other [fol. 439] than in New York, are made how, who places the orders?

A. The local purchases are placed by telephone as a rule or the representative coming into the store. We always have a proper written confirmation however.

Q. But they are made by your own buyers?

A. Yes.

Q. Does your store engage in any joint advertising with other stores?

A. No.

Q. Do you make any attempt at standardization of lines or selling methods with other stores?

A. No.

Q. Do you make any payment to the Allied stores for your buying office and research service?

A. Yes, that is fixed at one-half of one percent of our sales.

Q. Does that cover all the service the Allied Stores render you?

A. Yes, outside of the auditing fee.

Q. How much does that auditing fee run?

A. $3,600. That is an independent audit, Ernst and Ernst.

Q. Do you know whether that is the actual cost of the auditing to the Allied Stores Corporation?

A. Yes.

Q. Will you outline briefly the department store competition which L. S. Donaldson encounters, taking it in order of size of stores, by volume of sales?

[fol. 440] A. Of course our chief competitor is the Dayton Company.

Q. That is in Minneapolis, directly across the street?

A. Diagonally across the street, yes.

Q. Is the Dayton Company larger or smaller than your store by volume of sales?

A. It is larger at this time.

Q. And that is an independent?

A. It is a closely held corporation, it is primarily a family control.

Q. Do you know whether the Dayton Company is a member of a volunteer?

A. American Merchandise Corporation.

Q. What service does the American Merchandise Corporation render?

A. Rapid buying service and the retail research, statistical and research information of all kinds.

Q. Does that service which the American Merchandise Corporation render differ from the service rendered to your store by the Allied Stores Corporation?

A. I think their research has been established longer and perhaps is still a little better than ours, although we are rapidly matching it, otherwise there is no particular difference, it serves the same purpose.

Q. And the Dayton Company competes with Donaldsons in every department?

A. Yes, in every department.

Q. And what is the next competition?

[fol. 441] A. Powers Mercantile Company.

Q. What sort of a store is that?

A. That store is owned and controlled by the Associated Merchandise Corporation.

Q. Is that an ownership chain?

A. Yes.

Q. Does the Associated Merchandise Corporation have more than one store in Minnesota?

A. Only one.

Q. Do you know how many stores it owns altogether?

A. Around eight or ten, about eight. I am not sure.

Q. Are they scattered quite widely over the country?

A. Yes.

Q. How does it compare to your store as to volume of sales?

A. Smaller.

Q. Does it compete with your store in every department?

A. Practically so.

Q. What is the next department store competitor?

A. I would say the Leader.

Q. What is the next one?

A. Thomas now.

Q. What kind of a store is that?

A. Specialty store, women's store.

Q. Do all the departments of Thomas Company compete with similar departments in your store?

A. Yes.

[fol. 442] Q. Is that an independent or member of a ownership chain?

A. I am not sure. I know a man named Yalonstein purchased it a short while ago, but I am not positive about the present connection of that store. Sears Roebuck & Company on Lake Street is a competitor also.

Q. Is Sears Roebuck a greater store than your store in volume of sales?

A. I believe if is smaller.

Q. Does it compete with your store in every department?

A. Yes, I would say and additional departments we don't have.

Q. And that of course is a member of a national ownership chain?

A. Yes.

Q. What is the next important competitor?

A. Montgomery Ward in the midway district in St. Paul. It affects the midway district of course.

Q. What sort of a store is that?

A. The same as Sears Roebuck, a general department store.

Q. And that of course is a member of a national ownership chain?

A. Yes.

Q. What other competition do you have?

A. Atkinsons, which has been taken over by Thomas Company, which was a specialty store on the order of Thomas Company.

Q. Was that an independent?

[fol. 443] A. No, it was a member of National Department Stores.

Q. Is that a ownership chain?

A. Yes.

Q. How many stores do they own approximately?

A. I don't know.

Q. That is a country wide organization?

A. Yes.

Q. Did the Atkinson store compete with your store in all the lines it carried?

A. Yes.

Q. You mentioned the Leader.

A. The Leader is a general department store. It has been more or less cash and carry, but is going into installment and charge accounts and is located in the next block to us.

Q. Is that an independent store?

A. I believe it is although its store is on the market.

Q. Do you know if it is a member of the volunteer organization?

A. They have some resident buying service, some affiliation, but I cannot recall the name of it now.

Q. Does it compete with your store in all lines?

A. In all lines it carries.

Q. Except for Sears Roebuck and Montgomery Ward, are these stores all located in downtown Minneapolis?

A. Yes.

[fol. 444] Q. That comprises your chief department and specialty store competition?

A. Unless we go into lines of men's clothing and furnishings.

Q. What principal competition have you in that line?

A. We have Rothchilds, Standard Clothing.

Q. Rothschild is a member of an ownership chain?

A. Yes, with headquarters in Chicago and a store in St. Paul and Minneapolis, and Juster Bros. That is local independent although I believe he has help from the manufacturers of men's clothing.

Q. Anything else in the men's clothing field?

A. Yes, there are a number of smaller stores. I think I mentioned Carr.

Q. Is that a chain?

A. No, local independent. I think the Thomas Heath manufacturers of men's clothing are backing them.

Q. Then of course you compete with other independent men's clothing stores in Minneapolis?

A. Yes, a number of smaller shops.

Q. Now take your basement, what lines do you carry there?

A. Our basement is fairly complete. It covers the ready-to-wear and accessories, also men's shoes and clothing on a smaller scale. About the only thing we do not carry in our basement is home furnishings.

Q. What differentiates your basement from the other departments?

[fol. 445] A. Locality and the fact they deal in lower class of merchandise. The clientele is largely cash purchases, getting to the lower priced type of customers.

Q. What competition do you have in your basement apart from the department stores?

A. Grants, Kresge, Fields, Neisner, Woolworths, Bentons.

Q. Which are chains?

A. I am not sure about Bentons. Fields formerly was connected with some Milwaukee concern.

Q. What competition do you have in home furnishings?

A. We have very strong competition in home furnishings, Boutell Bros. is probably the biggest.

Q. Is that an independent?

A. No, but it is the only store in Minnesota.

Q. Is that larger or smaller than your furniture department?

A. They do quite a contract business, department houses and hotels. I would say they are larger.

Q. What is the next?

A. The New England.

Q. Is that an independent or chain?

A. Independent.

Q. And after that?

A. Montgomery Ward, The Town Market and Davis & Reuben in Minneapolis. The Town Market is located in the midway district and I believe it is owned by Davis & Reuben.

Q. How about shoes?

[fol. 446] A. There are a number of shoe companies downtown. The Home Trade is locally owned, although they have two stores in Minneapolis and the Family Shoe Store in the Leader and I think they have some other outlets, Minneapolis Shoe Company is a local chain.

Q. How many stores?

A. I am not sure, I know they have a number. It is competition because they offer the second pair of shoes at a dollar, Feltman & Curme which I believe is a national chain.

Q. Do you know how many stores they have in Minnesota?

A. No. Then there is Dr. Scholls and Dr. Reed shoe shops and a number of others, French Shriner & Urner, a manufacturer owned chain.

Q. Speaking generally, is it true that most of your departments compete with stores handling that particular line of goods, some of which are independents and some of which are chains?

A. Yes.

Q. Almost everything you sell, you sell on a competitive basis?

A. I don't think there is a thing we have that is not very competitive.

Q. Would it be possible for you to add the chain store tax to the price of your goods and pass it on to the customer?

A. No. You take the lower priced items under 50c, you couldn't add one cent. That would be 2%. Of course we have quite a number of items that would fall in that bracket and of course you couldn't add it for competitive reasons.

[fol. 447] Q. What would be the result if you did attempt to add it?

A. Well, we would not sell the merchandise.

Q. I take it you have made some study of department store merchandise in the course of your business.

A. Yes, it comes up constantly, checking and re-checking and comparing results.

Q. And do you make a study of the profit which you receive on various lines?

A. Yes.

Q. Have you made a study of the profit ratio in relation to gross sales?

A. Yes, we check with every source of information we can get all the time.

Q. What do you find as to the uniformity or lack of uniformity of profit ratio between different lines of merchandise at any one time?

A. There is really no comparison, nothing consistent. The best comparison we can get is where we get a typical figure, an average figure from the Allied Stores Corporation which we can use to compare with.

Q. Do you find any variation between one line and another?

A. Yes, material variation.

Q. Illustrate that?

A. Some of the lines are more expensive to handle.

Q. Take 1934. Have you made any study of your profit ratio?

A. We do. I have a manual back there.

[fol. 448] Q. I show you Plaintiff's Exhibit Y and ask you what that is?

A. A schedule I took off our ten best profit departments in percent of sales in 1934 and our ten poorest.

Q. From what record did you make up this statement?

A. From our own books.

Q. Do you keep a record on your books for various departments?

A. Yes, every department is handled separately.

Q. So the figures appearing on this statement are true transcripts of the figures on your books?

A. Yes.

Q. Did you prepare this statement yourself?

A. I made it up by myself from the original figures.

Q. And then checked it?

A. Yes.

Q. So you know of your own knowledge that the figures on the statement are accurate and reflect directly the figures on your books?

A. Yes.

Mr. Mitchell: Offer in evidence Plaintiff's Exhibit Y.

Mr. Orfield: Objected to as incompetent, irrelevant and immaterial in that this tax does not depend on profit and loss and on the further ground it is not the best evidence, it is made up from books which are not in court and it is hearsay.

Q. How many different records went into the making up of this statement?

[fol. 449] A. I took these figures from the departmental ledger, back of that are any number of records from the individual sales checks for the year, in thousands.

Q. You show here figures for 20 departments. Do I understand you would have to have 20 separate records to verify this statement?

A. Yes.

Mr. Mitchell: Offer in evidence Exhibit Y.

By the Court:

Q. What do these numbers mean.

A. They are our department numbers.

Q. You have 119 departments?

A. Yes.

Q. And you checked these?

A. I took the ten best and the ten poorest departments in order, all other departments would come in between that range.

Q. Do I understand your books would show a higher percent of profit in any department than shown on this exhibit?

A. None higher than that.

Q. None higher than nine percent?

A. That is correct.

Q. There are practically 100 other departments not accounted for?

A. Yes, they are all in between, the best and the poorest showing.

The Court: I will receive it for what it is worth.

Exception by defendant.

Q. Mr. Malcom, does Donaldsons compete with other enterprises handling various lines shown on Exhibit Y?

[fol. 450] A. Yes.

Q. And from your study of retail merchandising, are you able to say whether the profit ratio in the year 1934 for those other lines will be approximately the same as your own store experience as shown on this sheet?

A. No, I think that would vary.

Q. Substantially?

A. Yes, certain stores. Of course I could not say except from a typical figure.

Q. But speaking generally, would you expect to find the same difference prevails?

A. In some departments, yes.

Q. Does your experience indicate that a particular group of stores handling the same kind of merchandise will show a wide or small variation in profit ratio from one year to another?

A. A wide variation.

Q. And what about the single store in the group, would that show a wide variation in profit ratio?

A. A wide variation as a rule.

Q. Would that be true whether the group of particular stores are operated as a chain or independently?

A. I think so.

Q. What is Plaintiff's Exhibit Z?

A. This is a statement I have prepared from Fairchilds Financial Manual.

Q. What is Fairchilds Financial Manual?

A. It is a standard publication published annually, deemed reliable and generally accepted as true.

[fol. 451] Q. Who is it published by?

A. Fairchilds Publication.

Q. And what does it comprise?

A. It is a compilation of published annual reports of any publicly owned stores.

Q. What do you mean by publicly owned stores?

A. Wherever the store is available to the public because of stock being listed on the various exchanges.

Q. How often is it published?

A. Annually.

Q. Do you use it in your business?

A. We always obtain one or two copies and refer to it quite a bit. It gives the years operating results for the

individual or group of stores as the case may be. For instance, the Leader, one of our competitors is shown individually there.

Q. And you refer to it in your comparison as to the results of other stores in the same general line of business?

A. Yes.

Q. Have you found it to be accurate?

A. I have no occasion to find it otherwise.

Q. And it is generally referred to in the trade?

A. Yes.

Q. And accepted as true and reliable?

A. Yes.

Q. Which particular publication would you refer to in making up Exhibit Z?

A. The operating results for the year 1934.

Q. In a general way, what does Exhibit Z consist of?

[fol. 452] A. A list of independent department stores and a list of chain department stores and the 1934 volume of sales, net profit, percent of net profit or loss and relative position by volume and net volume of loss.

Q. Did you make up Exhibit Z yourself?

A. Yes, I took it off the manual.

Q. Did you check it back?

A. Yes.

Mr. Mitchell: Offer in evidence Plaintiff's Exhibit Z and submit the manual from which it was taken for the information of counsel.

Mr. Orfield: Objected to as incompetent, irrelevant and immaterial, not the best evidence and hearsay.

The Court: What is the purpose of this Mr. Mitchell?

Q. Mr. Malcolm, the last two columns entitled 'position,' indicate what?

A. In order of number and the best showing. For example, on a net profit percent, the Outlet Company were in first position, 6% profit.

Q. So you put the figure 'one' after the column net profit percent?

A. Yes.

Q. And in volume of sales it was 17?

A. Yes.

Q. And that is why '17' is in that column?

A. Yes.

Q. And that is true all the way through?

A. Yes.

Mr. Mitchell: The purpose is to show the absence of rela-
[fol. 45] tion in the volume of net sales and percent of net profit in the department store fields.

Q. In this list did you include all the independent department stores?

A. Yes, as appeared in the publication.

Q. And did you include all the chain department stores?

A. Yes.

(Argument by counsel).

The Court: It will be received for what it is worth on the theory of the plaintiffs.

Recess until 2 P. M.

Q. Mr. Malcom, the L. S. Donaldson Company owns and operates only one store?

A. Yes.

Q. The Dayton Company has a small branch store at the University of Minnesota?

A. Yes.

Q. That is in addition to its downtown store in Minneapolis?

A. Yes.

Q. Does it have any other stores?

A. The Hudson Jewelry Company in the corner of the block on Nicollet Avenue, I understand it has been taken over so that it is operated as part of the store.

Q. It is situated in the building in which Dayton Company is operating?

A. Yes.

Q. But apart from that has Dayton Company any other stores?

A. No.

[fol. 454] Q. The officers of L. S. Donaldson Company all reside in Minneapolis?

A. Yes.

Q. And devote their entire business time to the operation of L. S. Donaldson Company?

A. Yes.

Q. Showing you Plaintiff's Exhibit A-A, I ask you what that is?

A. It is a condensed summary of the operating results of L. S. Donaldson Company for the calendar years 1929 to 1934 inclusive.

Q. Who made up that summary?

A. I did.

Q. From what sources?

A. From my books of original entry.

Q. What books particularly did you refer to in making up the statement?

A. From the general ledger which is taken off the trial balance form and extended to the operating store and balance sheet and from that point we prepare statements.

Q. And are the books to which you refer kept under your personal supervision?

A. Yes.

Q Kept by you as the regular records of the company?

A. Yes.

Q. And you have occasion to refer to them occasionally in the operation of your business?

A. Constantly.

Q. Have you checked back the figures on this statement with the books themselves?

[fol. 455] A. I have.

Q. And are they true and correct of your own personal knowledge?

A. Yes.

Q. If you were to bring into court the records that lie behind the statement, what would it be necessary to produce?

A. There are quite a number of records, general ledger, departmental ledger, purchase accounts, journals and so on,—sales audit record, any number of them.

Q. Is it part of your work Mr. Malcolm to be familiar with the financial result of the companys operation from time to time?

A. Constantly. I have the figures daily as to sales, stock, weekly on expense, payroll and other expense and look over weekly departmental merchandise reports which give us our control, stock, sales of the divisional departments, monthly departmental reports which support this statement.

Q. So apart from this statement you have personal knowledge in the operation of your business as to the results?

A. Yes.

Q. And were you actively connected with those operations during all the years in question here?

A. Yes.

Q. And you have had personal knowledge during all these years?

A. Yes.

Q. And is this statement corroborated by your personal knowledge?

[fol. 456] A. Yes.

Mr. Doherty: Offer in evidence Plaintiff's Exhibit A-A.

Mr. Orfield: That is objected to on the ground it is immaterial in that the present tax is not based on profits or losses, not the best evidence in that the books which support it are not in court and on the ground it is hearsay.

Q. Are the red figures losses?

A. Yes.

The Court: I don't suppose it is material as far as the tax effecting this particular store.

Mr. Mitchell: No, we are not trying to show that the tax was erroneously assessed as to amount, but to show the general effect of the tax. We want to show what the operations were before the tax was paid and what the effect of the tax would be on top of that.

The Court: It does not give the State the opportunity of knowing the method or manner or what charges are against the gross sales or what is included in the cost of sales.

Mr. Mitchell: Of course the witness is here and can testify to those matters.

(Argument by counsel).

Q. What does cost of sales include?

A. The net cost of the merchandise after the cash discount and other discounts, the net cost of merchandise sold.

The Court: Is there any particular information the State would like in re...ion to this exhibit?

[fol. 457] Mr. Orfield: We object to this exhibit on the ground it is immaterial, but if it is to be admitted we should like to have submitted with it, the annual balance sheets for each of the four years covered by the exhibit because they go into the matter in greater detail and give the State a better chance to examine into the nature of the various

items and into the possibility of there being items entered as losses which are improperly entered.

The Court: What about furnishing the balance sheets? Are they available?

A. Yes, I evidently picked up copies this noon and they are based on the fiscal year and this statement is based on the calendar year.

Q. What is the fiscal year?

A. January 31st.

Q. And in order to give balance sheets on the basis of the calendar year, what would be necessary to do?

A. It will be simpler on the fiscal year if that is satisfactory.

Q. Will you bring such balance sheets up here?

A. Yes.

Q. Mr. Malcolm these documents you have just handed me are your original balance sheets for the years 1929 to 1934 inclusive?

A. Yes, the fiscal years ending January 31st.

Q. They were taken from your records?

A. Yes.

Q. And are the original records kept in your file?

A. Yes.

[fol. 458] Mr. Mitchell: I will submit them to counsel for their consideration. We re-new the offer of the exhibit.

Mr. Orfield. We should like the privilege of submitting these balance sheets to our accountant.

Cross-examination.

By Mr. Orfield:

Q. Mr. Malcolm, you have stated with reference to the nature of your competition, that as far as the matter of shoes is concerned, your leading competitors are the Home Trade, Family Shoe Store, Minneapolis Shoe Store, Feltman & Curme, Dr. Scholls, Dr. Reed and French Shriner & Urner. Each of these stores is a chain store, is it not?

A. I believe so. These are in addition to the general department stores in competition. Minneapolis Shoe Store is a local chain.

Q. But it is a chain under the Minnesota law?

A. Yes, Stendel is an independent store, Feltman & Curme are part of a national chain, Home Trade is an independent

owned store, but have two stores in the city and the Family Shoe store has a department in the Leader, in addition to their store and Dr. Scholl's and Dr. Reed are operated by manufacturers as a series of stores.

Q. But they are a chain?

A. Yes and French Shriner & Urner the same way. They have only one store in Minneapolis to my knowledge.

Q. You testified with reference to your competition with your basement store and that your leading competitors are [fol. 459] Grants, Kresge, Fields, Woolworths and Neisner. Each of these is a chain store?

A. Yes.

Q. You testified with reference to the store competing with your store generally and that these stores are the Dayton Company, Powers Mercantile Company, Thomas Store, Sears Roebuck, E. E. Atkinson, Montgomery Ward and the Leader. Of these stores Dayton Company is a chain store is it not under the Minnesota law?

A. Operating a branch store at the University.

Q. Powers Mercantile is a chain store?

A. One store in the state.

Q. They are associated with a national chain?

A. Yes.

Q. Sears Roebuck is a chain?

A. Yes.

Q. E. E. Atkinson is a chain store?

A. Yes.

Q. Montgomery Ward is a chain store?

A. Yes.

Q. You stated that Allied Stores Corporation provide you with an advisory service and that this advisory service is charged for at the rate of one-half of one percent. Is it your understanding you are buying the cost of this service at a profit?

A. I cannot say but I think one-half of one percent approximates the cost, by comparison with our cost for previous service.

Q. Before you became a part of Allied Stores Corporation, you stated that you secured this advisory service from several sources?

[fol. 460] A. Yes.

Q. Do you remember the cost of procuring this service at that time?

A. In 1928 our cost was $30,325, amounted to 34%.

Q. Was it as complete an advisory service?

A. No, no research.

Q. Is it not a fact that service was by no means as valuable as the present service?

A. In my opinion, yes.

Q. You are familiar with the financial methods of your company?

A. Yes.

Q. Do you get assistance in financing from the Allied Stores Corporation?

A. I do now.

Q. Will you state the amount of that assistance at any one time for the last year?

A. January, 1936, $2,838,693.77.

Q. Will you state the rate of interest paid for the use of this money?

A. On $2,600,000 ¼ of one percent, on the excess of that amount, five percent.

Q. Are you familiar with the prevailing bank rate at the present time?

A. Yes, I am.

Q. Will you state what that rate is for loans?

A. One and one-half percent up, in our case if we were in the market for loaning money.

Q. What would be the upper limit?

A. I think probably around four and one-half or four and three-quarters percent. The rate is pretty low right now for commercial loans.

[fol. 461] Q. Do you sometimes loan money to Allied Stores Corporation?

A. No, we have not been in that position.

Q. You stated that you had about 50 expert buyers. Do these buyers ever consult with the experts in the same fields of the Golden Rule?

A. Yes, I don't doubt some of them do.

Q. Is that consultation carried on quite extensively?

A. No, I would not say so. I think it would come about in most cases while in the market and happening to meet in the central office.

Q. But there is such consultation to a certain extent?

A. Yes, by telephone and visiting back and forth occasionally.

Q. Would it be true if an expert buyer in one store secures information which he thinks of unusual value, that he

would be expected to communicate that information to the expert in the other store?

A. Not necessarily, but they would like to receive that information.

Q. And they often do receive that information?

A. I don't doubt it.

Q. Would it be true that volunteer chain stores with which you compete, do not have access to the same extent to the assistance in financing their operations, as you do?

A. That I do not know.

Q. You stated with reference to the matter of control, that Allied Stores Corporation permits you to pursue your [fol. 462] own policy in the management of the store. Would it however be true that they would have the power to control your policy if they wanted to exercise it?

A. I think that is true with any majority stockholders.

Q. What is the average turn-over of goods in your store?

A. About four percent.

Q. You mean four times a year?

A. Yes.

Q. Would it be true in connection with the statement put in evidence where you speak of a high of nine percent in a given department, that would be nine percent for each turnover?

A. No.

Q. Isn't that nine percent based on sales?

A. Yes, that is true if you look at it that way. Nine percent on every dollar sold during the year.

Q. If in a given department you have $10,000 invested and the profit on turnover is nine percent and there are ten turnovers, the profit on the investment would be 90%?

A. On the average inventory.

Q. A turnover of four percent, which you say is true in your case would be characteristic of your store?

A. I think that is a reasonable figure for a general department store taking in all types of departments, some high and some low, in speaking of the average of the store.

Q. Do you lease some of your departments to other organizations?

[fol. 463] A. Yes, we have a few leased.

Q. What is the basis of such leases?

A. Generally on a commission on sales.

Q. What would be the amount of that commission within limits?

A. It varies from the lowest, music at 10% to the highest one would be 20%.

Q. It is true then that you base the rental of your leased departments on the gross volume of business done?

A. Yes, in each case. As I say we have very few but as a rule it is on sales.

Q. Does the buying service of Allied Stores put you in touch with markets outside of the United States which are helpful?

A. Yes, although we don't import very much merchandise.

Q. Did you ever have a corresponding advantage in being put in contact with foreign markets before you joined the Allied Stores?

A. Yes, Syndicate Trading had numerous foreign offices and our own buyers contacted those offices when in Europe.

Mr. Orfield: That is all.

Redirect Examination.

By Mr. Doherty:

Q. I believe you testified part of your basement competition came from Fields and Bentons?

A. Yes.

Q. Are those stores chain stores?

A. As far as I know. Fields I believe is independent. I [fol. 464] think I testified this morning they formerly had a Milwaukee connection, but I don't know the present picture. Bentons as far as I know is independent, although formerly they had some connection with Lane Bryant.

Q. If you were listing the competitors in your basement in the order of their importance, what position would those two stores occupy?

A. About third and fourth, those outside of the large department stores.

Q. I believe you testified Stendal is the second most important of your shoe department competition?

A. Outside of department stores.

Q. And is that a chain or independent?

A. Independent.

Q. As to your buying and advisory service, would you say it is more or less valuable than the corresponding service which Dayton Company gets?

A. Well, the affiliation of the Dayton Company has been in operation for a much longer period of time, outside of that I think they are about on a par.

Q. In any event you would not say Dayton's service is less valuable than yours?

A. No, they have a very valuable service.

Q. And that is a volunteer service?

A. Yes.

Q. In the matter of consultation between buyers, did your buyers consult with buyers from other stores before the Hahn Stores took you over?

[fol. 465] A. Yes.

Q. Was that consultation any less than now?

A. I don't think so, no.

Q. In regard to your foreign buying, what percent of your total purchases come from outside the United States?

A. I would say less than one per cent now.

Q. There is some question about the relation of turnover to profit, these figures as to ratio of net profit in each department which appear on Exhibit Y, were those made up on the basis of each particular sale or as a result of a years operation?

A. As a result of a years operation.

Q. Then when you say in a particular line you made a certain percent of net profit, are you including the turnover which would occur in that department during the year?

A. Naturally.

Q. And if your turnover is eight, nine times, that is already included in the figures which appear on Exhibit Y?

A. Yes.

Q. Then would it not be true that the percent of 'nine' would be multiplied by nine on the turnover?

A. Not necessarily, you take your average investment for the year.

Q. And these are your final figures?

A. Yes.

Q. Your net figures?

A. Yes.

Q. As to management Mr. Malcom, are the conditions [fol. 466] which Donaldsons have to meet in Minneapolis substantially similar to those in other stores throughout the country?

A. To the best of my knowledge, yes, they all have competition and plenty of it.

Q. I am thinking about the particular problems your store has to meet. Are they like the problems other stores have to meet generally?

A. Do you mean merchandising?

Q. Yes.

A. I would say yes.

Mr. Doherty: That is all.

Recross-examination.

By Mr. Orfield:

Q. Are you familiar with the net profits of the Hahn Company on its operations in Minnesota?

A. I am familiar with our own operations.

Q. You have given figures for the operations of L. S. Donaldson Company. Do you know whether those figures would be the same as for the Hahn Company, that is, as you indicate certain profits with reference to your store, would the same profits apply to the operations of the Hahn Company?

A. No, they would not necessarily be the same.

Q. They might be considerably different?

A. Oh yes.

Q. You stated that your buyers consulted with expert buyers of other stores just as freely before they became associated with Allied Stores as they do now. Did they consult with their competitors in the Twin Cities?

[fol. 467] A. Not so much competitors but the other stores affiliated in the Syndicate Trading Company.

Q. Would it not be true however that you now have an association in the Twin Cities to which you can go at any time for consultation, which you did not have prior to your association?

A. That is true.

Q. Isn't that an advantage?

A. Some of the buyers think so and some do not. I would think it would be an advantage, it should be.

Q. With reference to the question of net profit on turnover, is it not true that if you want to figure the net profit on the investment in a given department, that that net profit becomes approximately the net profit listed in your statement multiplied by the number of turnovers?

A. It is not common to make any such calculation.

Q. But would not that be true except as it might vary in the difference in stock as it is kept throughout the year? That does not mean a profit of nine percent for the year but a profit of nine percent for each turnover?

A. Yes. If you had an investment of $1,000 and sold $10,000, you would naturally turn the same dollar invested ten times, but we don't figure it that way.

Q. But for the purpose of the record would not that be true?

A. On your merchandise, yes.

[fol. 468] Q. Do you recall which departments are leased at the present time?

A. I can.

Q. Will you give us that please?

A. We lease our millinery department, oriental rugs, music, wall paper, tires, meat department, sewing machines. Those are the main departments.

Q. Is it true that it has been the practice for a number of years to lease these various departments on the basis of gross sales?

A. That is true.

Q. Does that practice depend on the idea that there is a relation between gross sales and net incomes?

A. Not necessarily in the case of a leased department. In most cases the department is leased because somebody else supplies and does a better job than we can. None of us care to lease departments, we would prefer to operate them ourselves. Out of the commission from a leased department, we have to pay all expenses outside of the direct expense.

Q. But upon the basis of the practice, the assumption is that the lessee will be able to pay more or less according as his sales go up or down?

A. In no cases do we have a sliding scale on the commission, it is a flat rate.

Q. But the rental goes up as the sales go up?

A. Naturally, the more you sell the more your dollar return.

Q. But the percent goes up as the sales go up?

[fol. 469] Q. For a number of years your store has been showing a net loss?

A. Since 1929.

Q. What is the main reason for that?

A. A drop in volume due to the depression.

Q. It is true that the loss is primarily accounted for by reason of the depression?

A. Not entirely. We took smaller quarters, had less space ground floor than before and were forced to discontinue our grocery and meat departments, which cut quite a bit off our volume.

Q. Is it true that the total amount of the loss has been growing less year by year?

A. Yes.

Q. Is it not also true in spite of the continuing depression, the amount of loss grew less as your organization became better established?

A. I think that is so, particularly since the first year. It was a very trying year to get adjusted.

Q. It is a handicap for a new owner to take over a business and carry it on?

A. Especially in a year like 1929.

Q. And is it not further true that you have been overcoming that handicap from year to year?

A. We have been trying to, yes.

Q. Do you know whether the Allied Stores Corporation throughout the nation has increased or decreased its number of stores in the last ten years?

A. I think they have increased them.

Q. Has that increase been a substantial increase?

A. A few smaller stores. I think Mr. Roth explained the acquisition of the Pomroy stores.

[fol. 470] Mr. Orfield: That is all.

By Mr. Doherty:

Q. You testified that the profits of the Allied Stores Corporation for Minnesota would be different from the profits of Donaldson Company. What did you mean?

A. I take it the question meant that in the consolidated picture of the two stores, the percentage would vary.

Q. You had in mind that the operation of the Golden Rule would enter into the Allied figure?

A. Yes.

Q. And the figure for Donaldsons might not correspond with the figure for Donaldsons and the Golden Rule?

A. I would be surprised if it did.

Mr. Orfield: Renew the objection to Exhibit A-A.

The Court: I understand you have had the necessary statements here to check back on it.

Mr. Orfield: With the exception this statement covers calendar year and the statements cover the fiscal year. There is no accounting tieup between the two.

(Argument by counsel.)

Mr. Mitchell: We are perfectly willing to let the State's accountant go over to the office of L. S. Donaldson Company and go over the books and records and check them with the exhibit.

The Court: Could the plaintiff prepare a summary corresponding to the books?

Mr. Mitchell: We would be glad to make up such a state-
[fol. 471] ment and have it ready tomorrow morning.

The Court: All right, the matter will be held open until tomorrow morning.

W. J. Eiden, recalled.

Examined by Mr. Mitchell:

Q. You have just handed to us the balance sheets which counsel requested you to make up.

A. Yes.

Q. And those are the balance sheets of the Golden Rule as of January 31, 1930 to 1936 inclusive?

A. Yes.

Mr. Mitchell: I will submit those to counsel for their consideration.

Q. You have also handed me an operating summary for the year 1935. Is that made up on the calendar or fiscal year basis?

A. The fiscal year basis, the same as the operating summary submitted yesterday.

Mr. Mitchell: I will submit that to counsel also for consideration.

Q. This is for the Golden Rule of course?

A. Yes.

Recess for twenty minutes.

By Mr. Orfield:

Q. Mr. Eiden, I show you the balance sheet of the Golden Rule for the years 1930 to 1936 inclusive, ending January 31st for each of those years and referring to the same will [fol. 472] you state the amount which the Golden Rule owed Allied Stores on January 31, 1930?

A. $1103.30.

Q. On January 31, 1931?

A. $12,272.85.

Q. On January 31, 1936?

A. $201,088.49.

Q. Will you state what rate of interest you paid?

A. 5%.

Q. Will you state the amount due from the parent company on January 31, 1931?

A. $269,716.92.

Q. On January 31, 1932?

A. $179,331.17.

Q. January 31, 1933?

A. $337,139.72.

Q. January 31, 1934?

A. $218,007.95.

Q. January 31, 1935?

A. $190,455.23.

Q. Will you state the amount of interest paid on these items?

A. I cannot be sure of the exact rate each year. At the present time it is five percent and at no time did it exceed five and one-half percent to my knowledge.

Q. Does this mean that the Golden Rule has the privilege of lending surplus money to the parent company?

A. Yes.

Q. This statement indicates at the close of each of five of [fol. 473] the last seven fiscal years there has been money due from the parent company varying in amount from $179,000 to $337,000?

A. Yes, that is right.

Q. And on each of these amounts you were getting interest at approximately five percent?

A. That is right.

Q. In the same periods within limits, can you state the rate of interest you could have received for that money if you had placed it on time deposit in the local bank?

A. I would not be able to state, I would not know.

Q. Would you know what rate of interest you could get from the local banks at the present time on time deposit?

A. I am sure I don't know what the banker's policy is on large balances at any time.

Q. Would you presume it would be more or less than five percent?

A. I presume it would be less if it was put on time deposits.

Q. That being so, does the Golden Rule have an advantage in connection with the use of its money by reason of the fact it is associated with Allied Stores Corporation?

A. It may or may not, depending on how this excess cash would be handled. I presume there may be some ways investments would be made that would net approximately five percent, but I am not positive of it.

Q. You would not know of any safe way of investing it that would net five percent?

[fol. 474] A. Not off-hand, no.

Mr. Orfield: That is all.

Mr. Mitchell: Re-new offer of Exhibit Q, summary of Golden Rule operations.

Mr. Orfield: Re-new objection on the ground it is immaterial.

Mr. Mitchell: Counsel has had the opportunity of checking the balance sheets for the corresponding years.

The Court: It will be received.

Exception by defendant.

Jesse S. Robinson, sworn on behalf of plaintiffs, testified.

Examined by Mr. Doherty:

Q. Where do you live?

A. Northfield.

Q. What is your occupation?

A. Professor of Economics at Carleton College at Northfield.

Q. What subjects do you teach?

A. I have charge of applied economics including courses in business administration, marketing and accounting.

Q. Is retail merchandise within your field?

A. Yes, in connection with the marketing course.

Q. Tell us briefly what your education and experience has been? Where did you receive your education?

A. At Allegheny College in Pennsylvania.

Q. Did you take any postgraduate work?

[fol. 475] A. Yes, I have a Ph.D. degree from the Johns-Hopkins University, where I took work in the field of economics for four years.

Q. Did you hold any other degree?

A. Yes, I have an honorary degree from my alma mater.

Q. What teaching positions have you held?

A. I was appointed instructor in economics at Vanderbilt and when the war came, was Director of Education at Camp Sheridan, Alabama. After the war I was an expert in the Federal Board for Vocational Education, and resigned to go to Simpson College in 1919. After a year here I was called to Carleton where I have been ever since. I am now chairman of the department and during a leave of absence was Professor of Economics at California University in the summer of 1926 and 1927 and in 1934 I was visiting professor of economics in the London school of economics, a branch of the University of London, England.

Q. Have you written any publications?

A. Yes, I am editor of a few text books including Essentials of Economic Theory as applied to problems of business. I have written a manual, student manual in accounting, marketing and business administration and articles too numerous to mention in the scientific journals, in Business and Economics, in Marketing and Merchandise publications.

Q. Have you made a study of retail merchandising?

A. Yes, somewhat in connection with the marketing course.

[fol. 476] Q. Have you made a study of chain store merchandising?

A. Yes, I have been interested in that subject for a number of years.

Q. Now will you define the term profit ratio?

A. Profit ratio is the percentage relation between net profit and net sales in gross sales.

Q. How do you define net sales?

A. Net sales is the differential between gross sales first and returns in allowance.

Q. If chain store tax law defines gross sales in the same way, the terms would be interchangeable then?

A. Yes, I should say so.

Q. In the course of your study, do you find there is any variation of uniformity between different kinds of business in the same year as to profit ratio?

A. Yes.

Q. Is it uniform or are there wide variations?

A. There are wide variations.

Q. Do you find that true in almost any year you examine?

A. Yes, essentially.

Q. Is that true whether the business is conducted on an independent or volunteer chain or ownership chain basis?

A. Yes, I think that make little difference.

Q. Now, do you have any particular figures on Minnesota in that respect?

A. Yes, I believe the University of Minnesota has a study of retail distribution conducted by Professor Vaile. It is [fol. 477] a study of a small town in Minnesota, Waseca.

Q. Do you know why that town was selected?

A. They thought it was a typical town in every way.

Q. Do you have the figures with you?

A. I do.

Q. Will you tell us what the investigation shows?

A. The following net profits for different types of business, groceries and meats, 3.31% of sales; drugs, .39 of one percent; restaurants, beer parlors, 13.42%; candy store variety, 2.74%; men's clothing, dry goods, 2.62%; stock farm equipment, 2.27%; furniture, hardware, plumbing, 1.15%; lumber, feed and fuel, 2.31%; filling station, 1.65%; and the total for the miscellaneous group, a loss of 7.07% with a total of 29.86%.

Q. What year was that study made for?

A. 1933 and published in 1935.

Q. And in each of the classes you have mentioned, were all the establishments of certain classes in Waseca included?

A. I understand so.

Q. Those figures you have given us represent the profit ratio for each of those classes of business?

A. Percentage of profit to sales.

Q. And they show a variation from 3.31% profit to 7.07% loss.

A. Yes, the total for the miscellaneous group showed that loss.

[fol. 478] Q. With variations in between?

A. Yes, as I read.

Q. As to variations of percent of net profits between various enterprises in the same line of business at a particular time, what does your study show?

A. There are likewise variations there. Would you like me to compare two companies?

Q. I don't care for specific instances, but your conclusions?

A. There are variations. You will find in one year one company will make a larger ratio to sales than another and in a later year that will be reversed.

Q. Are those variations small or large?

A. Sometimes small and sometimes large.

Q. What do you find as to variations in a particular enterprise between one year and another?

A. They likewise vary. I have a figure for one store that varies from 12.65% for 1913 to a loss of .83 of one percent for 1920 and the average was 5.98% and 1.22% for the period from 1913 to 1934. If it is pertinent I will mention the company.

Q. I don't think we need that. Taking the average profit ratio of a particular kind of business from one year to the other, what does your study show?

A. Yes, it will vary considerably.

Q. And in all these cases Professor Robinson, does your testimony hold also whether the particular enterprise or class of enterprise is doing business by ownership chain, volunteer chain or independently?

[fol. 479] A. Yes, in varying degrees.

Q. Now, as to the relation between gross sales and net profit, does your study indicate any marked increase in the percent of net profit as volume of sales increases?

A. Not particularly.

Q. Is it possible to establish any fixed relation between percent of net profit and volume of sales?

A. I have not been able to. I have here figures for department stores in 1934. They had a loss in the sales volume of $150,000, .5 of one percent and a loss of .3 of one percent. I am applying to a three to $500,000 business and then a gain from $50,000 to $70,000 and then beyond that a loss commencing at $750,000 to one million, 1.02%; four million to ten million, 1.5% and then at that point

the loss was not so great, it went the other way from ten to 20 millions, only .4 of one percent. I have not been able to see any relation and I am frank to say so.

Q. Now take the ownership chain. Does your study indicate that there is any fixed relation between percent of net profit and number of stores in a particular chain?

A. Well, that is a little difficult to say, but I have some figures here for shoe chains which seem to me to be good and when the number of stores increased from ten to 30, there was an increase in the profit ratio from nothing to two percent and when the stores increased to 300, there was a written sales decline to .4 of one percent. I have the figures for the high profit chains and while they made a higher [fol. 480] profit, the figures are as I have indicated.

Q. In other words, as far as your studies indicate an increase in the number of stores seems to be followed by a decline in the profit ratio?

A. For those stores that I am familiar with. Sometimes as the stores increase, you will find there is an increase in profit but you reach a point of diminishing returns. Which year that is will depend on your type of store, but it seems from what information I have that you reach that point sooner or later.

Q. Does your study indicate that there is any reason why an increase in the number of stores is followed by a decrease in the ratio of net profit?

A. I have felt that probably the difficulties of supervision would enter into that. Supervisory work would cost money and the smaller store would not have to have that expense.

Q. Professor Robinson, what would you say as to the profit ratio of one store of a small number of stores with the same gross volume of sales as compared with a group of a larger number of stores?

A. I don't understand the question.

Q. Take for a basis of comparison a group of one or two stores with a certain gross volume sales and compare it with a system of a larger number of stores having the same total gross volume of sales. Can you make any comparison as to profit ratio between the two?

A. I am not sure I can.

[fol. 481] Q. Would you expect to find any advantage in favor of the smaller number of stores?

A. I think that is particularly difficult to answer. Sometimes a small store may be operated very efficiently and

you have a high profit and the company with more stores might not be operated so efficiently and you have a smaller profit.

Q. Have you made any study of the lumber industry in Minnesota?

A. Yes.

Q. What can you tell us as to the number of stores selling lumber which are connected with ownership chains or with at least more than one location?

A. It is the study made by the United States Department of Agriculture on the distribution of soft wood lumber in the middle West, that is #116 of the studies of the lumber industry. That would indicate that in parts of the State of Minnesota the proportion of line yards was as high as 85%.

Q. What do you mean by 85%?

A. 85% of the yards operated centrally and highly specialized. They have special sales, auditing, credit, traffic, advertising departments which report directly to the general manager. The general office organizes a line of yards, selects the local managers and directs operation of the branch yards.

Q. Then as I understand it a line yard would be a central office with a line of offices throughout the state centrally owned and centrally directed?

A. In other words, a line yard would be analogous to the [fol. 482] definition of an ownership chain, its operation would be similar.

Q. Have you made any study of gasoline distribution in St. Paul and Minneapolis?

A. Yes, there is a study of this made by Professor Vaile in the Twin Cities which was put out by the University of Minnesota Press.

Q. Does that indicate the percent of sectional and national chains?

A. It gives the figures on gasoline merely according to the type of distributor and classified as to sectional and national units.

Q. Will you give us the figures as to the City of Minneapolis for the years 1930, 1931, and 1932?

A. For 1930 sectional national chains had 57.3% of the receipts, local multi-units, 25.4%; bulk filling stations, wholesalers and commercial, 8.7, 3.6 and 5% respectively.

For 1931, 56.8, 23.1, 10.6, 5.5 and 4%. For 1932, 58.9, 18.9, 12.6, 5.9 and 3.7%.

For the City of St. Paul, will you give us the figures for the years 1929 to 1931?

A. 68.6, 16.5, 8.3, 3.3, 3.3% for 1929. For 1930, 54.8, 26.6, 11.9, 2.4 and 4.3%. For 1931, 59.9, 23.5, 13.2, .4 and 3.4%. 1931 is the largest figure I have for St. Paul.

Mr. Doherty: That is all. You may cross-examine.

Cross-examination.

By Mr. Orfield:

Q. Professor Robinson, have you made a study of the [fol. 483] advantage and disadvantage of quantity buying in the grocery field?

A. I have some general knowledge of it.

Q. In your opinion is there an advantage afforded by grocery chains that can purchase large quantities as compared to the individual stores that cannot purchase in large quantities?

A. I would agree with Professor Converse that you are comparing unlike things.

Q. When groceries are bought in carload lots, is it true that they can be bought cheaper?

A. I have so understood.

Q. Would it be true that the chains generally do buy in carload lots?

A. It is my understanding.

Q. Would it be likewise true that the independent store does not buy in carload lots?

A. There are a few independents large enough to buy in carload lots.

Q. Would it be true that chain stores generally buy for cash?

A. I have so understood that it is.

Q. Would it be true that independent stores to a considerable extent do not buy for cash?

A. I haven't those figures, some do and some do not.

Q. Would the chain stores in connection with their buying use expert men to do their buying?

A. Yes, I should assume so.

Q. Would that be an advantage to the chain stores as far as that feature of buying is concerned?

A. Not necessarily. You see if you have an expert buyer [fol. 484] you have to pay him and that is expensive. If there was that saving there would be an advantage, otherwise not.

Q. Would it be your belief that generally speaking, the use of expert buyers does result in a saving?

A. It would be a pure guess on my part. They think so, or they would not have them obviously.

Q. Is it true that chain stores maintain their own warehouse?

A. I have understood so.

Q. And it is likewise true independent stores have to depend on jobbers and wholesalers?

A. Yes.

Q. Would it be true that the jobbers and wholesalers in providing the warehousing facilities for the independents make a profit on the business?

A. They aim to.

Q. As a rule would it be true they do?

A. I haven't those facts, I am sorry.

Q. Would your study indicate that the chain stores as a rule have abundant capital so that they can take advantage of large scale buying?

A. Not according to the Minnesota Law, two stores while small might be a chain.

Q. Would it be true that the larger chains might have sufficient capital?

A. Yes, I should assume so.

Q. Would you consider that an advantage?

A. Longer purse strings?

Q. Yes.

A. Generally speaking, yes.

[fol. 485] Q. Would it be true with reference to that feature, the larger chains would have an advantage over the smaller chains?

A. Yes, with reference to that one feature, I should say so.

Q. Would it be true that chain stores operating in the larger cities would do their advertising jointly?

A. Yes, I think so, whether it be ownership or volunteer or cooperative chains. Would you like me to point out the distinction there?

Q. I think not. Would you think there was a uniformity in joint advertising?

A. That is a bit difficult to say. They have never been able to get any result or returns from advertising that are satisfactory only as the advertising brings in sales and profits greater than the amount, would there be an advantage. Anything I could say would be more or less of a guess.

Q. Would it be true that chain stores in the grocery field use standard equipment?

A. Yes, I would say regardless of the type of chain, volunteer or co-operative.

Q. Would there be an advantage in using such standard equipment?

A. I would agree with Professor Converse, there might be an advantage and might be a disadvantage, it might work either way. The disadvantages I take it were inflexibility, advantages, customers' recognition.

Q. Generally speaking would you think the advantage would be greater than the disadvantage?

[fol. 486] A. My guess would be of no service to you.

Q. Would it be true that the larger chains do maintain research departments with reference to purchasing, trends in the trade and matters of that sort?

A. Research department sounds a bit general as a term, but something analogous to that, statistical information.

Q. In your opinion do the larger chains that maintain those departments profit by reason of maintaining such departments?

A. Whether they do or not is a matter of opinion. My guess would not be helpful, they think they do or they would discontinue them. It is an expense you see.

Q. Are you familiar with the amount of quantity discounts given so that you can state within limits what those discounts would be in given lines?

A. I doubt if I am.

Q. Would you know what that would be in such a field as soap?

A. No, I would not.

Q. Are you familiar with the facts brought out in the Congressional investigation of chain stores recently in process with reference to rebates?

A. Which investigation?

Q. The Patman investigation. I think he is chairman of the committee?

A. In a general way I am familiar with that.

Q. Then you no doubt noticed that evidence was presented to show that the Atlantic and Pacific received rebates in one year aggregating six million dollars.

[fol. 487] A. I don't know, but it is possible.

Q. Do you know from your study whether other chains received similar rebates?

A. It is difficult to find that out, they are not going to tell you.

Q. Have you the copy of the report on the Wasecs stores?

A. I have it in my portfolio.

Q. Would it be true that the stores in the volunteer chains would not have as abundant capital available for their business as the stores in the larger integrated chains?

A. May I ask how you are defining larger?

Q. We will say chains of the size of the National Tea?

A. There are some volunteer chains not so large as the National Tea.

Q. Is it not true however, that the form of organization of the volunteer chains is such that it does not have the same abundant capital available as is available to the large integrated chains?

A. Are you defining volunteer chains in the manner it has been defined here, as the central corporate group of wholesalers who organize the retailers?

Q. You may use it in that sense.

A. In that sense I should say usually the same provisions are open to both, the funds are provided by the public.

Q. Defining it now in the sense of a chain made up of retailers, not co-operative?

A. Yes, as far as I know, the co-operative chain has not [fol. 488] lacked capital for the reason the retailers would not provide it. Most of them are operated to have a certain amount of stock in the wholesale organization formed by them.

Q. Are you familiar with the practice on the part of the integrated chains, to book certain items in advance of need, for instance, sugar, coffee, soap, flour?

A. I am not sure of what you mean.

Q. Ordering for delivery in thirty days, but on the basis of the price at the time of the order?

A. No, I am not familiar with that. I have heard it has been done on all kinds of chains, integrated or volunteer and probably they do.

Q. Do you know how the net profit of the Atlantic and Pacific grocery chain compares with the average net profit of grocery stores?

A. Such data are available but I don't have them in mind.

Q. You do not know whether they are higher or lower than the average for other grocery stores?

A. I haven't those figures available that I would care to go on record. May I answer with regard to the last question again? There are some data for Minnesota, general information prepared by Professor Vaile at the University of Minnesota with regard to grocer retailing and that study would indicate that the profits of ownership chains for Minnesota are 1.06% and for independent stores, wholesale, retail stores, 1.96% and for the volunteer, wholesale and retail together, 4.10% so the profit would indicate that the volunteer chains made the highest, the independents [fol. 489] next and the ownership chains the lowest.

Q. For what year is that?

A. This was published in 1932.

Q. I will show you now Professor Robinson, a report which has been offered in evidence, Exhibit L and ask you if you are familiar with the contents of the report?

A. In a general way.

Q. From your knowledge of this report and of the men who prepared it, would it be your idea that the statements made herein are reliable?

A. I should think so, if you take the report as a whole.

Q. Calling your attention to this statement on page 15: "Considered from the standpoint of the size of chains, as measured by the number of stores, it is found that nine kinds of chains (grocery, grocery and meat, dollar-limit variety, dry goods and apparel, confectionery, women's shoes, men's and women's ready-to-wear, musical instruments and general merchandise) show marked tendencies for the rate of net operating profits to sales to increase with increases in the size of the chain." As applied to those particular chains, do you agree with the statement read?

A. Yes, and I think you will find there are some on the other side too.

Q. Just a minute. Turn now to the study made by Ralph Cassody and Harry J. Ostlund entitled "The retail distribution structure of the small city," being Waseca, would it be possible to draw conclusions which would be likely to be

[fol. 490] true for the State from the study of the chains in as small a city as Waseca?

A. I didn't understand this was a study of chains of Waseca but of retail establishments of Waseca.

Q. Then changing the question to read retail establishment, would it be likely to be true that such a study of retail establishments in a small city would be true as applicable to the State as a whole?

A. I think it would be true with regard to cities of the same general kind.

Q. But would it be true with reference to the cities of the size of St. Paul, Minneapolis and Duluth?

A. They thought it was a typical city and I had accepted that as fairly satisfactory.

Q. But you have stated with reference to cities of that size. Waseca is a small city. Would it not be true that many other factors would enter into the picture in cities of the size of the three largest in the State, which would make the picture very different if a study were applied to such city?

A. I should agree with you it is a better picture of the rest of Minnesota than the larger cities.

Q. Might it also be true that certain conditions might exist in one portion of the State in the trade territory of this little city of Waseca which might be very different in the trade territory in other cities which might render a corresponding study of such a differently situated city quite different from this one?

[fol. 491] A. There might be factors entering in it which make the difference.

Q. Is it true that by far the greater portion of the chain stores are located in the three largest cities of the State?

A. I think that is true, the largest proportion but not the largest number necessarily. I haven't those figures.

Q. Do you know what the average turn-over is in the lumber business?

A. I haven't those figures with me. I have seen them, but don't have them with me.

Q. Would that turn-over in your opinion be large or small as compared to the turn-over of the average chain?

A. It would likely be smaller.

Q. That being true, would it be true that the personal property tax would fall correspondingly more heavy on the lumber business than on the average chain business?

Mr. Doherty: Objected to as immaterial, argumentative, speculative and remote.

The Court: He may answer if he can.

A. I haven't the facts in mind.

Adjourn until 10 A. M. Wednesday.

Mr. Doherty: Plaintiffs rest with the privilege of calling Mr. Malcom and Professor Robinson at 2 P. M.

Motion to Dismiss

Mr. Orfield: At this time the State moves that the actions of plaintiffs and each of them be dismissed, on the ground that plaintiffs have failed to establish or substantiate a cause of action against the State or any right to recover against [fol. 492] the State.

The Court: Motion will be denied.

Exception taken by defendant.

O. H. Landin, sworn on behalf of the State, testified:

Examined by Mr. Orfield:

Q. Your name is O. H. Landin?
A. Yes, sir.
Q. What is your business or profession?
A. In the grocery business.
Q. How long have you been engaged in that business?
A. About 30 years.
Q. Can you give us the date when you started?
A. 1906.
Q. Were you then acting for yourself?
A. Yes.
Q. You had your own store?
A. Yes.
Q. Where was it located?
A. Chicago.
Q. How long did you operate your own store?
A. A little less than two years.
Q. After that period, what line of work did you go into?
A. With the National Tea in Chicago.
Q. The National Tea of Illinois or Delaware?

A. I wouldn't know which company it was at that time, but it was in Chicago.

Q. How long did you work with them in Chicago?

[fol. 493] A. Nearly ten years.

Q. In what capacity did you work with them?

A. I was a clerk, store manager and then district manager.

Q. At that time were you working in Chicago?

A. Yes, sir.

Q. You continued in Chicago how long?

A. A little less than ten years, that would be from 1908 until 1918 I think. Then I was transferred to Minneapolis.

Q. In what capacity?

A. Manager of the Minneapolis branch.

Q. That included how wide a district?

A. It was just Minneapolis at first.

Q. What was the size of the business of the company?

A. We came up and took over the H. P. McBride stores. I think they had 12 or 13 stores.

Q. How long did you continue with them as manager?

A. Up until three years ago, 1933, the first part of March, 1933.

Q. During all that period did you act as manager?

A. Yes.

Q. For the National Tea Company of Delaware?

A. Yes.

Q. Did you act with them in any capacity other than that of manager?

A. I was vice president and general manager.

Q. For how long a period were you vice president?

[fol. 494] A. About ten years.

Q. Commencing when?

A. I think it was 1924 or 1925.

Q. Did you continue as vice president up until March, 1933?

A. Yes.

Q. As such vice president and general manager of the National Tea Company stores, what was your duty?

A. Many of them. I was buyer for several stores.

Q. For how many years?

A. Up until 1927 I was the only buyer we had in the grocery line. I did all the buying in the grocery line from 1918 until 1927.

Q. What other lines of buying were there?

A. Fruits and vegetables.

Q. What connection did you have with the fruits and vegetables?

A. I bought them up until 1923 or 1922. After that I didn't buy vegetables but I bought the groceries until 1927.

Q. Then you had complete charge of the buying of the groceries until 1927?

A. Yes.

Q. Did you have any supervisory connection in 1927?

A. Yes.

Q. Did you have complete supervision of the purchasing of groceries until 1933?

A. Yes.

Q. And did you have complete supervision of the purchas-
[fol. 495] ing of the vegetables during the entire period?

A. Yes.

Q. From your experience as clerk, store manager, district manager, general manager and vice president of the company, did you become thoroughly familiar with the manner in which all phases of the company's business was transacted?

A. Yes.

Q. Did you personally supervise all phases of the company's business within your district?

A. Yes.

Q. Will you state the extent of the company's development in number of stores owned and operated from the time you started until you left the company's employ?

A. I think we had 215 or 218 when I left their employ.

Q. Starting with how many?

A. 12.

Q. Did you have supervision of the company's business looking toward the expansion of the company's stores?

A. In a way I did.

Q. Take a specific case, if the question would arise whether a new store should be opened at a given location would you pass on the question?

A. Yes.

Q. Did you have the decision in the matter?

A. I had all of it, I didn't have to ask anyone.

Q. Didn't you have to refer to the central office with regard to your decision?

[fol. 496] A. No.

Q. In connection with your various duties during these 25 years, as clerk, store manager, district manager, general manager and vice president, did you become quite familiar with the business of the competing independent stores in the same line of business?

A. Yes, I did.

Q. Did you become thoroughly familiar with the various phases of that business?

A. I did.

Q. Did you also become familiar with the business of your competitors who were in volunteer chains?

A. Yes.

Q. Did you in connection with your various duties have supervision of the making of leases for the new stores?

A. Yes.

Q. Did you have charge of the personnel in your stores?

A. Yes.

Q. Did you personally know them?

A. Yes.

Q. Did you have occasion to note whether when you left the business there was a considerable turn-over in that personnel?

A. Yes, quite a lot.

Q. You state for 9 years from 1918 until 1927, you yourself had control of all buying in the grocery line and supervision at all times of all buying. Will you state in that connection, what was your experience with reference to [fol. 497] quantity buying, we will say in some particular line, take for instance, sugar. Did you buy in quantities or not?

A. I used to buy in quantities and make bookings for future delivery. The sugar refiners would book for 30 days and then there is 12 days for shipping, so you would have 42 days to take it out.

Q. What was the idea of that?

A. Whenever we expected the sugar price to go up we would take out enough sugar to last for 60 to 90 days.

Q. Did you have to make payment at the time of the booking?

A. No.

Q. If you bought the sugar in smaller quantities would you have to make payment at the time of the booking?

A. We would have to make payment when we took it out, up to seven or ten days after delivery.

Q. Would it have been possible to make bookings in small quantities?

A. There would not be any object in it.

Q. What saving would you effect by purchasing in car load rather than small quantities?

A. We bought it directly from the refiner and we got the jobbers price and sometimes got a special rate besides.

Q. Will you develop a little further the advantage of booking in advance, in what manner could you effect a saving?

A. The only advantage would be if the market would go up.

[fol. 498] Q. How would you know whether the market was going up or down?

A. You would have information from headquarters and you saw it yourself and the company had research and they would notify me to book up sugar for 60 to 90 days.

Q. Would that service prove helpful to you?

A. Yes, at times like that it would.

Q. Do you recall the amount of discount in sugar in car load lots within limits?

A. The discount is two per cent for cash and we would buy it for the same price the jobbers would. Of course it would depend on how much was bought.

Q. At all times you got discounts for your quantity buying as much as the jobbers did?

A. Yes and sometimes more.

Q. Take the item of soap, in what quantity would you buy that?

A. If we expected an advance in that, the manufacturer would notify us and I would buy as much as one hundred and twenty car loads in one order, twelve companies and ten car loads for each company, that is of the leading brands.

Q. How large a discount would you get by reason of that quantity buying?

A. Sometimes I got a special discount of ten, fifteen or twenty cents a box.

Q. Do you know the approximate percentage of the total cost that would be?

A. It would be all the way from five to eight per cent.

[fol. 499] Q. And you got that discount by reason of quantity buying?

A. Yes.

Q. And was there a cash discount?

A. Yes, two per cent for cash.

Q. What was your plan of operation in the matter of buying flour?

A. That would be in the same way, I booked as high as ten thousand to twenty thousand barrels at a time.

Q. When your purchases would represent that amount, would you get any special discount in addition to the cash and quantity discounts?

A. In flour there is a set price, but you sometimes can drive a bargain, and get a booking lower than the regular market price.

Q. I show you State's Exhibit 1, and I will ask you what that is?

A. That was the last booking I made with the company, two weeks before I left.

Q. A booking of what?

A. Flour.

Q. How much flour?

A. Five thousand barrels.

Q. From whom was it purchased?

A. Washburn Crosby.

Q. How did the price you arranged for compete with the market price at that time?

A. It was about seventy-five cents a barrel less than the market. That was in small sacks. It was the lowest price I ever heard of flour sold in all my time.

[fol. 500] Mr. Orfield: Offers in evidence State's Exhibit 1.

By Mr. Doherty:

Q. The price here is $2.25 per barrel?

A. Yes.

Q. For five thousand barrels, how many car loads would that be?

A. That would be 205 to be exact.

Q. And you have a discount of seventy-five cents per barrel?

A. It is not a discount, it is a price under the market.

Q. It was a special price under the market?

A. Yes.

Q. Was the market at that time $3.00?

A. The lowest possible price I was quoted by any other mill was $3.00 in the same order.

Q. This was very unusual, reducing below the market?

A. I would say it was.

Q. Ordinarily when the market is $3.00 a barrel you don't get as much as twenty-five cents off a barrel?

A. No.

Q. This would not be typical of your experience?

A. It depends on the bargain you drive with them. I would offer the price and if they did not accept it they would not have to, but they usually accepted it.

Q. But this is the lowest price you ever got?

A. Yes, the lowest price I ever got.

[fol. 501] Q. So this is a very unusual transaction?

A. Yes, that one is, but—

Q. I am asking about just this one. Is this Exhibit one of the records of the National Tea Company?

A. No, I kept that as a souvenir because it is the lowest price I ever got, it is just a contract.

Q. It is a carbon copy of the original contract?

A. Yes.

Q. Where is the original contract?

A. Washburn Crosby has it.

Q. And does the National Tea Company keep copies of all such contracts?

A. Ordinarily they do until they are used up because there is no advantage in keeping them after that time.

Q. For the time being, don't these become the records of the National Tea Company?

A. Temporarily.

Q. How long?

A. Sometimes they don't keep them at all.

Q. Generally speaking, how long do they keep them?

A. There was no set time. I was the buyer of the flour and when I got my regular invoice I never kept the contract?

Q. This was a purchase made just before you left?

A. Yes, just a few weeks before I left.

Q. How does it come you took this with you rather than leaving it with the National Tea Company's records?

[fol. 502] A. Because it was an unusual thing.

Q. It was so unusual you wanted to keep it as a souvenir?

A. Yes.

Mr. Doherty: Objected to as immaterial, it is not a typical transaction but something extraordinary and unusual.

The Court: It may be received.

By Mr. Orfield:

Q. With reference to this transaction, the price indicated on this record is $2.25 per barrel. What was the market price at that time?

A. There are different grades and brands of flour. For this particular brand the best price I could get was $3.00.

Q. And you bought it for $2.25?

A. Yes.

Q. Would you have been able to make a purchase at that price in a small quantity?

A. No.

Q. If you had been representing an independent store, could you have gotten a price to correspond with this price?

A. No.

Q. What would have been the price in a small quantity at that time?

A. I don't think I could have made it any better than $4.00 a barrel.

Q. Then was it by reason of the extraordinary size of the purchase that you were able to get this very low price?

A. I don't know about that, I often bought five thousand [fol. 503] barrels of flour but the bigger amount of course the better price they will give you but the five thousand purchase was not unusual for me at that time.

Q. In your buying experience, did it often happen in buying in large quantities you would buy below the usual market price?

A. We would always get a discount of some kind in big lots.

Q. Would it be possible for the volunteer chains to purchase in quantities as large as you purchased?

A. I don't think there is anyone large enough to buy that much. The volunteer chains don't buy.

Q. Do the jobbing houses buy?

A. The jobbing house might have been able to buy a couple thousand barrels but the stores don't get any advantage on it.

Mr. Doherty: Are you talking about chains where the affiliation is between an independently owned wholesaler and a group of retailers or where a group of retailers owns the wholesale house?

A. No, where the jobbers conducts the business.

Q. And tries to form an affiliation with a number of retailers?

A. Yes.

Q. In cases where retailers are associated and own the jobbing house, would they have the same advantages of information and research afforded by the National Tea?

A. I don't know but I don't think so.

Q. Do you know of any research organization maintained [fol. 504] by any other volunteer chains comparable to the National Tea?

A. No, I do not.

Q. From your acquaintance with the business, would you be likely to know if there were such an organization?

A. There wasn't in the days gone by, but they may have now. There wasn't anything like that when I was in business because they weren't as large as the National Tea.

Q. As general manager of the stores, did you know in advance quite accurately the amount of goods you could sell in a future period?

A. Yes.

Q. Would it be possible for a volunteer chain to have similar information as to what could be sold to their group?

A. I don't think they could work it out that way. If I bought five cars of any one item and would run a sale, I would send so much to each store and they would have to sell it, but a volunteer would have to take it up with each store and ask them whether or not they would take that much and the question would be if they could get rid of it, but we force it on them and they have to sell it.

Q. The volunteer could not know definitely in advance how much it could sell?

A. No.

Q. Would that be true with reference to both types of volunteer chains?

A. I think so.

Q. After leaving the services of the National Tea Com- [fol. 505] pany, in what line of business have you been engaged?

A. Grocery and meat business.

Q. Have you had more than one store?

A. I have three.

Q. You have a chain of three stores?

A. Two grocery and meat stores and a separate meat market.

Q. Located where?
A. In Minneapolis.
Q. How long have you been operating that little chain?
A. I had the first store about the first of June, 1933.
Q. And you are still operating it
A. Yes.
Q. In connection with the operation of your own small chain, have you become familiar with the method by which small chain groceries operate?
A. Yes.
Q. Has the National Tea ever requested you to return any correspondence or invoices or letters which you have in your possession?
A. No.
Q. They remain in your possession simply because the National Tea has not called for them?
A. Yes.

Mr. Doherty: Does the National Tea Company know that you have that?

A. I don't know, I don't think so.

Mr. Doherty: You have no reason to believe they do know?

[fol. 506] A. I never thought anything about it.
Q. Was there any information that came to you in written form which was expected to be kept strictly confidential and not in the general files of the company, open only to your own inspection?
A. Yes.
Q. Did you sometimes make purchases direct from the National Tea Company of Illinois?
A. Yes.
Q. Do you remember what percentages of your total purchases would come from the National Tea Company of Illinois direct?
A. It would be a small percentage, we only bought items they manufacture.
Q. What would they be?
A. Preserves, olives and beverages, occasionally some fruit but not much. There were not very many items. Of course their own brand of coffe which ran into a big percentage.

Q. I show you State's Exhibit 2 and ask you what that is?

A. This is a statement that I asked a buyer to give me, a statement of coffe purchased.

Q. Purchased when?

A. Purchased from one year to another, 1931 to 1932.

Q. And this was prepared by who?

A. One of the buyers. It was prepared personally for me to see what the sales were from one year to another.

Q. Do you believe it to be correct?

A. Yes.

[fol. 507] Q. Do you know from your knowledge of the books of the company that it is correct?

A. Yes.

Q. In a general way what does Exhibit 2 show?

A. It shows the amount of coffee we bought from the National Tea of Illinois and these are their private labels and advertised-brands. I wanted to make a comparison.

Mr. Orfield: Offer in evidence State's Exhibit 2.

By Mr. Doherty:

Q. When was this prepared?

A. I don't know what date is on there.

Q. The years are 1931 and 1932?

A. Then it would be made right after the first of the year.

Q. You mean this sheet was prepared while you were still with the company?

A. Yes.

Q. These figures were made up?

A. Yes.

Q. By whom?

A. The buyer.

Q. What is his name?

A. Colonel Charley Green.

Q. Is he still with the company?

A. No.

Q. Do you know where he is now?

A. He is in Minneapolis. I don't know his address but he is with the National Guard over there.

Q. When you left the company, did you take this with you?

[fol. 508] A. That was my own. I wanted it for my own observation.

Q. As manager of the National Tea?

A. I was interested to know how things were going.

Q. But at that time you were giving all your time to the National Tea Company's business?

A. Yes.

Q. And your interests in the affairs of the National Tea concerned the National Tea Company's business only?

A. Yes.

Q. This was made up for the purpose of giving you information to use in the conduct of the National Tea Company's business?

A. Yes.

Q. The salesman who made this up, where do you assume he took it from?

A. From the buying cards. He kept a record and made it up from that.

Q. You yourself didn't make any comparison between the statement and the records?

A. I compared it to see that it was correct. I talked to him about it but I didn't go through the whole book to see if it was right.

Q. Did you compare any of the figures with the figures on the cards?

A. Yes.

Q. Why?

A. I was trying to check back.

Q. Didn't you rely on him. You went back and checked it over?

[fol. 509] A. There is a big increase there over the year before and I might question it and say, let's see this and that.

Q. You say you might?

A. Yes.

Q. Do you recall whether or not you did in this case?

A. No.

Q. You have no recollection as to what extent if any you made any comparison?

A. I know I went over some of the items.

Q. Do you recall it for sure?

A. I always do that, I want to verify it some way.

Q. Every time you ask for a summary of records from the employees do you feel it necessary to go back and check?

A. Not always but on a big item like that I would, that was a big proposition.

Mr. Doherty: Objected to as no foundation laid, the witness knows nothing about it.

The Court: Did you take this from the records of the organization?

A. The buyer made it up from the records.

The Court: The records of the organization?

A. Yes.

The Court: And those records are records of the organization now?

A. Yes.

The Court: I suppose you would have the right to check this, I understand it is claimed to be a correct summary of the records of the National Tea?

[fol. 510] Mr. Doherty: But this witness has no knowledge whether or not it is correct, all he knows is that it was made up by a buyer.

A. I didn't make a complete check but I checked back items to see if they were correct.

The Court: The ones you did check were records of the organization?

A. Yes.

Mr. Doherty: But you have no recollection how many items you checked?

A. No, I couldn't remember that.

Mr. Doherty: You know you didn't check all of them?

A. I would not have to check all of them.

Mr. Orfield: Wasn't this prepared in the course of the business of the company and relied upon by you as being correct?

A. Yes.

Mr. Doherty: Objected to as no proper foundation laid.

Mr. Doherty: Are those card records?

A They are taken off the buyer's books.

Mr. Doherty: Are those permanent records?

A. I don't know, that is four years ago.

Mr. Doherty: Is it customary to keep them permanently?

A. It was something I installed in the last five or six years, I don't know if they have them or not now.

Mr. Orfield: As a matter of fact they were kept up until the time you left the company?

A. Yes.

[fol. 511] The Court: What does this purport to show?

A. What I wanted that for was to compare the coffee sales, our brands of coffee with the private brands and how they increased or decreased.

The Court: And the red figures mean what?

A. The decrease and the black mean the increase in either brand.

The Court: It will be received for what it is worth with the privilege of the plaintiff to check it.

Q. Showing you State's Exhibit 2, will you indicate the extent of the purchases of coffee made by your company from the National Tea of Illinois?

Mr. Doherty: Objected to, the exhibit speaks for itself.

The Court: It does.

Q. Will you explain which brands were bought from the National Tea of Illinois?

A. Come Again, National, Our Breakfast, and Sweet Girl. Those are the four brands.

Q. Was there an increase from 1931 to 1932 in the sale of these private brands?

A. We had three hundred and seventy-four thousand four hundred and forty-two in 1931 and six hundred and eight thousand four hundred and thirty-two in 1932, so we had an increase of two hundred and thirty-three thousand nine hundred and ninety in all brands for the year 1932 as compared with 1931.

Q. During the corresponding period of time, what was your experience with reference to the brands bought outside?

A. The totals were two hundred and forty-seven thou-

[fol. 512] sand two hundred and seventy-eight pounds in 1931, against two hundred and thirty-one thousand six hundred and eighty-two pounds in 1932.

Q. Do you know why there was an increase in the sales of your private brands and a decrease in the sale of the brands bought from other companies?

A. The prices were lower on our brands and they were pushing them quite hard.

Q. Were you able to purchase coffee from the National Tea cheaper?

A. Yes, very much so.

Q. Did you effect a considerable saving in the purchase of coffee by purchasing from the National Tea at Illinois?

A. Oh, yes.

Q. Would independent grocers enjoy corresponding advantages in the purchase of coffee?

A. Absoultely not.

Q. Would the members of the volunteer chains enjoy corresponding advantages in the purchase of coffee?

A. Absolutely not.

Q. Would other large chains comparable in size to you, and integrated chains, enjoy similar advantages?

A. What do you mean by integrated chains?

Q. I mean corporate chains like the A. & P. They would have the same advantage?

A. Yes, even more.

Q. Why?

A. They have men right on the ground where the coffee [fol. 513] is grown, they have their own plantations.

Q. How do they compare in size with you?

A. They are about ten times larger.

Q. And that gave them still greater advantages?

A. Yes, they are the biggest members too.

Q. Then could they buy more cheaply than your company could?

A. Some of them.

Q. Were there ever special rebates given in the purchase of coffee from outside companies, showing you State's Exhibit 3?

A. No, I don't—

Q. State what State's Exhibit 3 is?

A. This is a letter enclosing a check for rebates from the National Tea in Chicago to me.

Q. And what is the general subject matter of the letter?

A. A check enclosing confidential allowance on a product we bought, a special discount.

Q. What goods are involved?

A. Groceries.
Q. What is the date of the letter?
A. May 17th, 1931.

Mr. Orfield: Offer in evidence State's Exhibit 3.

By Mr. Doherty:

Q. This is the original of a letter written by the National Tea in Chicago to Mr. O. H. Landin, 2887 3rd Avenue South, Minneapolis, Minnesota. Where did you get this letter?
A. I had it in my file.
[fol. 514] Q. Why isn't that in the files of the National Tea?
A. That was confidential, I always kept those at home.
Q. Did you consider this was a confidential matter between you and the National Tea after you left their employ?
A. I never thought of it.
Q. The same confidential information belongs to the man who now occupies your position. Why wasn't it turned over to him?
A. I never thought anything of it, it was in my own file at home. I put it in my pocket when I left the office.
Q. How many more of these records have you at home?

Mr. Orfield: Objected to as immaterial.
The Court: He may answer.

A. Nothing but my own letters.
Q. When a letter is addressed to O. H. Landin in relation to a National Tea Company transaction, do you regard that as your personal correspondence?
A. It was confidential and I didn't want anybody else to see it.
Q. Didn't you want the man who succeeded you in the employ of the National Tea, Mr. Larson, to know anything about it?
A. It never entered my mind.
Q. If it had entered your mind you wouldn't want to keep it from him?
A. I doubt if they have the same arrangement with him, [fol. 515] I don't know whether or not they have.
Q. This wasn't something given to you personally?
A. No.

Q. It was concerning the National Tea and its business?

A. There was nobody in the company who knew anything about it except myself and the book-keeper.

Q. But you knew that that information wasn't intended to be withheld from the next manager who succeeded you?

A. I never thought of it.

Q. What volume of this sort of thing have you in your private files at home?

A. That's all there was.

Q. How did you happen to pick this particular correspondence from your file?

A. That's all the personal matter I had, the letter, no invoices except that one contract.

Q. Who is the man in Chicago who signed this letter, Mr. May?

A. That is a girl.

Q. Is that the stenographer or somebody's secretary?

A. I think a secretary, I don't know if she is there now or not.

Q. Then it wasn't so confidential that the company thought it was necessary to withhold it from whoever signed the letter?

A. It was dictated to whoever signed it.

Mr. Doherty: Objected to as incompetent, irrelevant and immaterial.

[fol. 516] By Mr. Rutschick:

Q. Mr. Landin, you are here under subpoena?

A. Yes.

Q. Have you the subpoena with you?

A. Yes.

Q. When was this subpoena served on you?

A. Yesterday.

Q. This subpoena asks you to bring all books and records and papers and documents which might be in your possession which relate to the National Tea of Illinois?

A. Yes.

Q. In response to that subpoena you brought the records, part of which have been introduced as exhibits this morning?

A. Yes.

Q. Mr. Landin, had you ever known Mr. Orfield or myself prior to last Saturday?

A. No.

Q. Have you ever seen us before?
A. No.
Q. Have you ever talked to anybody about this case prior to last Saturday?
A. No.
Q. Did you know about the fact this case was being tried or going to be tried at any time?
A. No.
Q. You left the National Tea as managing agent and vice president and resigned voluntarily?
A. Yes.
Q. Was your resignation induced by ill health?
A. Not exactly.
[fol. 517] Q. And you had no personal feeling against any of the officers of the National Tea of Illinois or Delaware?
A. No, not particularly.

By Mr. Doherty:

Q. You did have a talk with counsel for the State last Saturday?
A. A few minutes.
Q. And at that time did you turn over your files?
A. No.
Q. When was that done?
A. This morning.
Q. Did you tell them last Saturday you had such files?
A. No.
Q. Did you tell them you did not?
A. No, there was nothing said about it.
Q. On either side there was nothing said as to whether or not you had such files?
A. Not a word.
Q. Was the extent of your knowledge acquired while in the employ of the National Tea discussed in this meeting Saturday?
A. Somewhat, yes.
Q. I mean the matters you have been inquired about this morning?
A. No, there were some questions. I told them I didn't want to answer their questions and get into this and then they said they would have to subpoena me.
Q. Did you give them any reason to believe you had files [fol. 518] of the National Tea in your possession?
A. Not then.

Q. When did you first do that?

A. Yesterday.

Q. Before the subpoena was served?

A. There was two subpoenas served, I had one Monday morning.

Q. Well, you say there was no information given them?

A. No, not on Saturday.

Q. When was the first time?

A. Yesterday. We talked about it for a few moments.

Q. Before the second subpoena was served?

A. Yes.

Q. Did you tell them that you had such files?

A. No, I told them I had some letters, a copy of the yearly coffee statement and nothing else but my own personal letters.

Mr. Doherty: That is all.

The Court: It may be received.

Q. In this letter, State's Exhibit 3, reference is made to $30.19 covering a confidential allowance from Hills Brothers. Will you explain the nature of such an allowance?

A. It was a special quantity allowance of two and one-half per cent from January 1st, 1931, to March 31st, 1931.

Q. What is meant by the word, "confidential allowance"?

A. Just an additional rebate I got.

[fol. 519] Q. Is that a rebate given to the trade generally or just the National Tea?

A. I couldn't say for anybody else. We got it, but an independent store couldn't get it. Jobbers might get it but I don't know whether or not they could.

Q. Do you know from your own experience that the big general chains customarily got extra allowances?

A. Yes.

Q. And the smaller buyers did not?

A. I know I cannot get them now.

Q. Have you tried?

A. Yes.

Q. You are still a chain?

A. Yes, but I cannot get them now, I cannot buy in large enough quantities.

Q. Are you buying the same line of groceries?

A. Not all, but some.

Q. Reference is also made to an allowance of $154.82

covering a very confidential deal. Is that a rebate of the same character?

A. I don't know what that is, I wasn't interested. I just got it, I don't know what it was for.

Q. Was it given because of a quantity purchase?

A. It don't give it here, I don't know what it was for. It was something on a quantity purchase, my share.

Q. But it would not be a cash discount?

A. No, it was a rebate.

Q. Could it be for anything else but a quantity purchase?

[fol. 520] A. No.

Q. Was it customary, Mr. Landin, for the National Tea to designate these rebates as confidential allowances?

A. Yes.

Q. Were these confidential allowances something in addition to the usual cash discounts?

A. Yes.

Q. Were they something in addition to the usual quantity discount?

A. Yes.

Q. From your acquaintance with the business of the volunteer chains, would you know whether such chains would be able to get corresponding special rebates in connection with their purchases?

A. They might get some but the independents would not. The jobber might have a special arrangement but it would not be passed on to the retailer.

Q. Would it depend on the amount of the purchase?

A. Yes, the larger the purchase the better the deal you would be able to make.

Q. Would the volunteer chains with which you were competing be able to purchase in the same quantity you were purchasing?

A. No.

Q. And would it be true you would be able to get better special rebates than the volunteer chains?

A. Yes.

Q. Mr. Landin, referring further to quantity purchases, did you buy fruits in quantities?

[fol. 521] A. Some items.

Q. In carload lots?

A. Yes.

Q. What items?

A. Peaches, strawberries, grape fruit and oranges.

Q. From whom?

A. From the brokers sometimes and peaches direct from the growers.

Q. And when you bought direct from the growers, where were they located?

A. In Colorado.

Q. Were these peaches shipped in carload lots?

A. Yes.

Q. In what kind of cars?

A. Refrigerator cars.

Q. Could you have bought from these growers in smaller quantities?

A. No.

Q. Did you get special prices by reason of the large scale purchase?

A. Yes.

Q. Did you effect considerable saving by reason of the purchasing of this fruit from the growers in carload lots?

A. Yes.

Q. Do you recall the amount of discount you would get within limits of purchase in small quantities?

A. There would be a big difference, sometimes twenty-five to fifty cents a case.

Q. Between the jobber's price and your carload lots?

[fol. 522] A. Yes, if they bought in a small way.

Q. How would the jobber's price compare with your price?

A. The jobber would usually get it for the same price we would.

Q. Were you ever able to make any special deals with the growers?

A. Yes.

Q. Whereby you got additional discounts?

A. The only time you got them was when they would wire in and ask you if you could use five carloads of peaches, for instance, at a special price and that would be from five to ten cents a box lower than the regular market or what we would get it from the brokers.

Q. From your acquaintance with the business and the business of your competitors, do you know whether there were any volunteer chains competing with you which were able to buy fruit in the same quantity you were?

A. No, none.

Q. Did you by reason of your ability to buy in very large quantities effect considerable saving?

A. Yes.

Q. Would it be true these competing volunteer chains would not be able to effect as large a saving per unit as you could?

A. No, they could not.

Q. You have spoken of buying goods in large quantities in order to effect a saving by reason of large quantities bought. In case your research service indicated a danger of fall in price, did you have any method of quickly dis-
[fol. 523] posing of this merchandise?

A. Yes, we would start cleaning it out, put on special drives and sell it.

Q. Would it be possible for independent stores to dispose of their surplus as quickly?

A. They would not have as big a stock and did not buy it as we did and the independent of course could not dispose of it as we could.

Q. Would it be possible for the competing volunteer chains to dispose of their surplus as quickly and readily as you could?

A. Absolutely not.

Q. Did the volunteer chains control the sales of independent stores, that is, was it the practice for the independent stores to buy their entire supplies from the chains, in the case of the volunteers?

A. Some of them, like the Red and White. They have to buy about ninety per cent from the Red and White wholesalers.

Q. But not all?

A. No.

Q. Did your research service give you information when there was a threatened fall in prices of standard groceries?

A. Yes.

Q. Did you on the occasion of that information put on special sales?

A. Yes.

Q. Would the independent stores, competitors have the same information?

A. In a way they would have some of it. The jobber
[fol. 524] might know it but he would not pass it on to the retailer because he would like to unload.

Q. So it would be true you would have more complete advance information as to the threatened fall in prices?

A. Yes.

Q. Suppose you wished to unload a shipment of groceries in Minneapolis and St. Paul, how would you advertise?

A. Newspapers and hand bills.

Q. How would that newspaper advertising be conducted?

A. Well, I would make up the ad.

Q. For all the stores?

A. Yes, I would make up the ad myself.

Q. And how would they be run, one for each store?

A. No, that would be in the daily newspaper and cover all the stores in Minneapolis and the St. Paul papers would cover St. Paul in all their daily papers.

Q. With such unified advertising would you be able to dispose of surplus stock quickly if you desired to do so?

A. Yes, we would.

Q. Will you compare the cost of advertising for the chains such as the one you operated and independent stores?

A. There is hardly any comparison. If you mean just an independent store, he has no way of advertising except by handbills, because the newspaper is too expensive for him.

[fol. 525] Q. How does the handbill advertising compare in efficiency with the newspaper advertising?

A. There is no comparison at all, newspaper advertising is more efficient in every way.

Q. And is it more economical?

A. Yes.

Q. Would there be a considerable variance in favor of the chain stores?

A. Yes.

Q. You have spoken of buying goods in large quantities. In connection with the making of those purchases did you have occasion to borrow money?

A. Yes.

Q. From whom did you get the money?

A. In the past few years I didn't borrow any money from the banks, but from the parent company.

Q. For how many years did you borrow money from the parent company?

A. For the past five or six years.

Q. Were there advantages in borrowing from the parent company rather than from the banks?

A. We got a lower rate of interest.

Q. How much?

A. One or two per cent lower than I could get at the bank.

Q. Was there any other advantage except the matter of interest?

A. We didn't have to worry about the account, there were no notes necessary.

Q. Were you ever pressed for payment from the parent company when it was impossible to pay?

[fol. 526] A. No.

Q. Were you able to get money in the quantities you needed it for swinging the purchases?

A. Usually.

Q. Were there times when you were not able to get it?

A. No, I was never turned down.

Q. I show you State's Exhibit 4 and ask you what it is?

A. It is a letter from the National Tea of Chicago to me, dated March the 6th, 1936.

Q. And the general subject matter of the letter?

A. Enclosing a check to me for $25,000.00.

Mr. Orfield: Offer in evidence State's Exhibit 4.

By Mr. Doherty:

Q. This is an original letter from the National Tea, written at Chicago to O. H. Landin, National Tea Company, Minneapolis, Minnesota?

A. Yes.

Q. How does it come this letter is out of the files of the company?

A. It is one of the same letters I got and kept at home in my own file. It was a personal letter to me.

Q. Was there anything confidential about the fact that the National Tea Company of Illinois was loaning money to the National Tea of Delaware?

A. It wasn't so personal, but it was the only letter I ever got pertaining to that.

Q. So this was not because of confidential information that you kept the letter?

[fol. 527] A. We didn't want anybody to know we were borrowing money.

Q. You didn't want anybody to know?

A. Anybody in the office?

Q. Wasn't there any place in the office where information could be kept where it would not be open to the inspection of the employees?

A. There were people who work around there nights and my office wasn't locked.

Q. Where did you keep those letters all this time?

A. Lots of the mail I put right in my pocket when I got it and then put it in my file at home.

Q. Did you make any inspection of your files at home when you left the company to see what part of it was to go to your successor?

A. No, I never gave it a thought.

Q. Did the company ever know you had any such papers?

A. I don't know that.

Q. Did you ever tell them you had any such papers?

A. I did not.

Mr. Doherty: Objected to as incompetent, irrelevant and immaterial.

The Court: It may be received.

Withdraw the witness at this time and call Mr. Malcom.

H. R. Malcom, recalled.

Examined by Mr. Mitchell:

Q. I show you Plaintiffs' Exhibit B-B and ask you to state what it is?

[fol. 528] A. This is a condensed operating statement for the fiscal years ending January 31, 1930 to 1935 inclusive, together with a supporting condensed balance sheet as of January 31st for the years 1930 to 1935 inclusive.

Q. This record was taken off your books in the same manner you described yesterday, except this is on the fiscal rather than the calendar year basis?

A. Yes.

Mr. Mitchell: Offer in evidence Plaintiffs' Exhibit B-B.

By Mr. Orfield:

Q. Mr. Malcom, I see in this condensed balance sheet in the column for 1935, an item reading, "Due to parent company, $2,748,883.03." What rate of interest do you pay the parent company?

A. One-fourth of one per cent on $2,600,000 and five per cent on the excess.

Q. Do you have any loans from local banks?

A. Not at this time.

Q. How long since you have had any?

A. We closed the first year showing $350,000.

Q. What rate did you pay on that?

A. I don't recall, rates were much higher then. I think four and one-half to five per cent. I think we have paid as high as six per cent in the past.

Q. Then it is true you are effecting a considerable saving in the interest paid on loans by reason of your affiliation with the parent company?

A. I am on that large amount.

Mr. Orfield: Renew the objection to the exhibit on the ground it is immaterial.

The Court: It may be received.

[fol. 529] O. H. Landin, recalled.

Examined by Mr. Orfield:

Q. Referring to State's Exhibit 4, it appears that you asked for a loan of $50,000 and got a loan of only $25,000. Did it happen frequently you were unable to get all the money you needed from the company?

A. No, I very seldom had to ask. It was the first time that ever happened, it was the only time I ever received an answer, I just got the checks.

Q. As far as you know during your 15 years as Vice-President and general manager, there was but one time when you asked for money from the parent company and didn't get what you asked for?

A. Money didn't seem to be any object. We always got what we needed. They said they would get it for me here if I couldn't make a loan.

Q. Do you know whether or not you made a loan?

A. I don't remember at that time, but I know I had not made any loans from the bank for years.

Q. But you had no difficulty in getting the necessary money to handle any deal you wanted to put through?

A. No trouble at all.

Q. Was there ever a time during your experience with the company when you were unable to take the cash discounts?

A. No.

Q. Was there ever a time when you were unable to take quantity discounts by reason of lack of money?

[fol. 530] A. No.

Q. Would you know whether your independent competitors were able in the same manner to take the cash and quantity discounts?

A. I couldn't say.

Q. With reference to the volunteer chains?

A. Some independent cases I know they couldn't because they didn't have the capital and couldn't pay their bills. There was a lot that didn't take their discount.

Q. From your experience would you say generally speaking, the National Tea had an advantage over the stores in volunteer chains in the matter of financing?

A. Yes, there was no question about it.

Q. Would that hold true generally of other corporate chains beside the National Tea?

A. Yes.

Q. In borrowing money, were you required to put up collateral to the National Tea?

A. No.

Q. Were you required to put up collateral to the banks?

A. Years ago we got a guaranty. George Rasmussen signed a guaranty for credit and he would get the money. He would sign a note, but there was no collateral.

Q. Do you remember in what amount that guaranty was?

A. I don't remember, it is so long ago.

Q. Is it true you were able to borrow money more readily from the banks by reason of your affiliation with the National Tea?

[fol. 531] A. Yes.

Q. Who is George Rasmussen?

A. President of the National Tea of Illinois.

Q. As General Manager and Vice-President of the National Tea of Illinois did you have control of the warehouse, the management of the warehouse for the company?

A. Yes.

Q. Are you thoroughly familiar with that phase of the company's business?

A. Yes.

Q. Will you explain the method by which your company provided warehouse facilities?

A. We had our own warehouse, we owned that.

Q. How many did you have?

A. Just one for Minneapolis and St. Paul and that supplied the country stores too, outside of Duluth. We have a small one in Duluth.

Q. How many did you maintain in the state?

A. Just the two.

Q. How many warehouses did you maintain for the four states?

A. Just the two.

Q. How would the cost of providing a warehouse in this manner compare with the cost of providing it for a small chain, we will say such a chain as you now have?

A. I have no warehouse myself.

Q. Why do you not maintain warehouse facilities now?

A. I haven't volume enough, it wouldn't pay.

Q. Is it not true a small chain cannot maintain warehouse facilities?

[fol. 532] A. It would not be profitable for them.

Q. Would it be true by reason of the fact that an independent or small chain cannot maintain a warehouse, it is impossible for such a chain to purchase in large quantities?

A. Yes, he could not buy in such large quantities so it would not pay to have a warehouse.

Q. Is there then a definite advantage in favor of the large chain in connection with its warehouse facilities as compared to the small chain or independent?

A. Yes.

Q. Is that a considerable advantage?

A. Yes.

Q. Would it be true that you have advantage in warehousing over the volunteer chain also?

A. I don't know how you mean, in some ways we might.

Q. Is it not true that the volunteer chains are smaller than you?

A. Yes.

Q. Is it not true the larger the chain the greater the economy in warehousing?

A. Yes.

Q. Then would it not be true you would have warehouse advantages over the volunteer chain.

A. Yes.

Q. That would give you an advantage in competing with the volunteer chains?

A. Yes.

Recess until 2 P. M.

[fol. 533] JESSE S. ROBINSON, recalled.

Examined by Mr. Orfield:

Q. Professor Robinson, I will show you this report of the U. S. Department of Commerce entitled "Detailed Distribution Retail Chains", and ask you if you are familiar with it?

A. In a general way.

Q. It is your opinion that the conclusions reached in this report generally speaking are accurate?

Mr. Mitchell: Are you familiar with the conclusions?

A. I am not familiar with the conclusions, but I have seen and read it, but not recently. It is a government document?

Q. Yes.

A. I am not familiar with the conclusions as such.

Q. Are you familiar with other and similar reports of the department of commerce on the subject of retail distribution?

A. I have read some of the reports.

Q. From such knowledge as you have of these reports, it is your opinion that the conclusions reached are entitled to be accepted as true?

Mr. Mitchell: Objected to as incompetent, irrelevant and immaterial, without foundation.

The Court: I suppose the question is whether or not he recognizes the authority.

Q. Yes, do you recognize this publication as an authority in the field it covers?

[fol. 534] A. Yes, I do.

Q. Do you agree with the correctness of the following statement found on page nine of this document?

Mr. Mitchell: Object to counsel reading from an exhibit not in evidence.

The Court: Overruled.

Exception by plaintiffs.

Mr. Orfield, reading: Principal chain advantages are centralized, large-scale buying, cooperation with manufacturers in the elimination of unnecessary expenses in manufacturing, selling, packing and delivery and in the reduction of avoidable seasonable peaks and valleys in plant production; the use of specialists in all administrative and supervisory activities, quicker action in enlarging successful practices and commodity sales and in restricting unsuccessful ones; more effective use of local advertising, and frequently the restriction of customer services, such as charge accounts and deliveries."

Mr. Mitchell: Are you including volunteer chains as well as ownership chains?

Mr. Orfield: Integrated chains only.

A. I would not accept that without qualification, no.

Q. With reference to the items covered in this statement, what qualification would you make?

A. I should hold in the first place these advantages may be had by other types of chains than ownership chains. They may be had by volunteer and co-operative chains as well as the ownership chains. These advantages are joint, co-[fol. 535] operative with restrictions. The use of experts, specialists, the use of advertising. I should hold those advantages might be had just as well with the volunteer and co-operative as the ownership chains. If you apply the statement to all types of chains, I think it would approximate the truth.

Q. You referred in your testimony I believe to sales in the lumber industry. Are you familiar with this industry in such a way as to know the comparative amount of stock covered in the lumber industry as compared to the volume of business so that you can compare that with the volume of stock carried in the grocery business as compared to the volume of business?

A. No, I would not be able to make that comparison, I haven't that data.

Q. Do you know the rate of turn-over in the lumber business as compared to the turn over in the grocery business?

A. I do not.

Q. Would it be true that real estate taxes would fall comparatively heavier on the lumber business as compared to the business of the average chain store?

Mr. Doherty: Objected to as incompetent, irrelevant and immaterial, without foundation, no bearing on this case.

The Court: Ask him whether or not he knows.

Q. Professor Robinson, do you know whether real estate taxes fall comparatively heavier on the lumber business as compared to the average chain store business?

[fol. 536] A. No, I haven't those facts.

Q. When you testified yesterday with reference to certain material from the Retail Distribution Structure of the small city, had you made a study of the volume?

A. Yes, I had read the volume.

Mr. Orfield: That is all.

Re-direct Examination.

By Mr. Doherty:

Q. Professor Robinson, there has been some question as to the advantages of chains against independents in the matter of advertising. Would those advantages, if they do exist, prevail throughout all kinds of chain store selling?

A. No, I should not say so. In department and variety stores, there is little, if any advantage.

Q. And in such lines of business as might engage in joint advertising, would that be true throughout the state or would it be limited to the larger cities?

A. I should say it would be truer in the cities than it is throughout the state.

Q. And is it true also in regard to any alleged advantages in standardization of equipment, those advantages would be limited to certain types of chains?

A. Yes, I should hold that the advantages were greater with certain types than with other types.

Q. Would you see any advantage in any respect that a small chain of four or five stores would have as against an independent store?

[fol. 537] A. No, if you limit it to so few stores as that, I should not.

Q. Would you find any advantage between a large ownership chain and a volunteer or co-operative chain in any important respect?

A. In no essential respect I should say.

Q. Then if there are any advantages which large chains enjoy, would those advantages be limited to a superiority of

small independents and small chains perhaps?

A. As I understand the law two stores make a chain so you would have to classify the two-store chains along with independents in regard to their advantage and disadvantage and the large chains might have some slight advantage over the very small chain or the independent.

Q. Are there any disadvantages?

A. Yes, there are likewise some disadvantages.

Q. But the large chains would suffer as against the small independents?

A. Yes, I should think so.

Q. And when you finally weigh the advantages of the large chains against the disadvantages, do you find any balance one way or the other?

A. I should not be able to put a balance on one side or the other.

Q. Do you have any figures as to grocery retailing in the Twin Cities classified by volunteer chains and independents?

A. I have only the figures of the University of Minnesota by Professor Vaile in his little volume—grocery retailing.

[fol. 538] Q. What do those figures include?

A. Those figures show that for volunteer chains the net profit as expressed as a percent of the customer's dollar spent was 4.10%, for independents 1.96% and for ownerships, 1.06%.

Q. What area did that cover?

A. Twin Cities.

Q. What years are involved?

A. The year for the retail side of volunteer chains and ownership chains was for the year 1929. The other years were somewhat earlier because they used other figures to check with.

Q. Did the study indicate that the figures which were used were comparable?

A. Yes.

Q. In spite of the fact different years were involved?

A. They felt they were comparable because the figures for the earlier years compared closely with figures contained in other studies for later years and I have no reason to quarrel with that opinion.

Q. Do you know how many stores that study included?

A. No, I do not. A number of stores.

Q. But was it a typical cross-section in every case?

A. It is my impression it was fairly typical.

Q. There was some question yesterday as to the relation of the Waseca study to the three large cities of the state. Would you expect to find in the three large cities of the state a substantially uniform profit ratio between different lines of business?

[fol. 539] A. No, I should not expect to find it any more than at Waseca.

Q. Then would you expect to find the same wide variation in the three large cities that your study indicated for Waseca?

A. I would expect to find some variation, but it would be difficult to say if it was as wide or wider than the figures for Waseca.

Q. But would those variations be substantial?

A. I should think so, it is a mere guess.

Q. There was some question yesterday as to the advantage a large chain would enjoy because of the abundance of capital which it could control. Is abundance of capital in itself any advantage?

A. Not in itself, but obviously any concern that lacks capital would be handicapped; but if it has whatever it needs, it need not have any more.

Q. Then as I understand it, the mere size of the capital is not in itself an advantage, but it is a question of whether the capital is sufficient for the needs of the business?

A. Yes.

Q. And your answer would be if the smaller business had sufficient capital it would be under no more disadvantage than the larger business with the larger capital?

A. That is what I understand as sufficient.

Q. You testified yesterday that the chains enjoyed certain advantages in certain respects. When you so testified were you thinking of the large ownership chains as compared with the volunteer chains?

[fol. 540] A. That would be, I suppose, from the context of our discussion, that that was the large ownership chains as compared with small chains.

Q. And also with independents?

A. Two stores make up a chain so independents would be grouped with them.

Q. Then your testimony yesterday as I understand it was directed to the comparison between large ownership chains

on the one hand and independents and small chains on the other hand?

A. Yes, that is right.

Q. And not as compared with volunteer chains?

A. No, volunteer chains are a different type.

Mr. Doherty: That is all.

Plaintiffs Rest.

Mr. Orfield: In order that the record may be clear, the State again moves at this time that the action of plaintiffs and of each of them be dismissed on the ground that plaintiff has failed to estabilsh or substantiate a cause of action against the State or any right to recover against the State.

The Court: Same ruling.

Exception by defendant.

Mr. Doherty: In connection with the last offer of evidence by the defendant, on the same page there is an additional passage which I intended to offer and I would like permission to offer that at this time from Plaintiff's Exhibit N. The passage read by counsel was on page nine, being that paragraph entitled "Advantages," and I would like to offer the next paragraph on the same page under the caption "Disadvantages."

[fol. 541] Mr. Orfield: No objection.

The Court: Received.

Plaintiffs Rest.

Mr. Orfield: State renews its motion for dismissal for the reason stated.

The Court: Denied.

Exception by defendant.

O. H. Landin, recalled.

Examined by Mr. Orfield:

Q. Mr. Landin, in connection with the business of the stores of the National Tea Company did you purchase eggs?

A. Yes.

Q. And how did you dispose of the eggs you purchased?

A. We took them in for merchandise in the country stores and supplied our city stores and the surplus we would store in the Spring of the year, April and May.

Q. You stored them in April and May?

A. Yes, that was the flush of the season.

Q. How did the price of the eggs at that time of the year compete with the price of the eggs you so stored?

A. They were much lower when we bought them than when we sold them in the Fall and Winter.

Q. Did you make a substantial profit by reason of the storage of the eggs?

A. Most of the time.

Q. At what seasons of the year were the eggs sold?

[fol. 542] A. We would start about November 1st on the storage eggs.

Q. Would it be possible for the independent stores and the volunteer chain stores competing with you, to store eggs in this way?

A. I never heard of any of the volunteer stores storing any eggs because the volunteers did not have any stores in the country and the independents would not store any. There would not be much advantage in buying them in town and storing them.

Q. In storing eggs, did you have to have storage facilities?

A. No, we stored them in cold storage plants.

Q. Would you say from your acquaintance with your own business and other chains and independents and volunteer stores that the integrated chains enjoyed a substantial advantage in doing business by reason of the fact it had the storage facilities for eggs?

A. Oh, yes.

Q. In connection with your purchasing, were there any companies that allowed you advertising rebates?

A. Yes, very many of them.

Q. Did you get the advertising allowances from the flour mills?

A. Yes.

Q. Would such an advertising allowance be something additional to what the trade generally would get from these mills?

A. I think s .

[fol. 543] Q. Would the independent stores be able to get such allowances?

A. No, I don't think so. The volunteers might have some such benefits.

Q. What was there about this method of advertising that made it particularly attractive to the mills to give allowances to you?

A. We would have a display ad in the newspaper and display it in the stores.

Q. Would you advertise the goods of the company giving you that allowance?

A. Yes, we would have an exclusive ad for that brand of flour.

Q. Would the cost of the ad be the same as the amount of the allowance?

A. No, not exactly.

Q. Would there be any profit made by you in addition to cost?

A. There would be some.

Q. I now show you State's Exhibit 5 and ask you what that is?

A. That is a letter from Chicago, from the National Tea Company to myself dated November 18, 1931, enclosing checks for special allowances.

Mr. Orfield: Offer in evidence State's Exhibit 5.

By Mr. Doherty:

Q. This letter is signed by who, M. R. Sturgeon?

A. I don't know who that is.

Q. Is there anything confidential about this letter?

A. It doesn't say confidential, sometimes they put it on [fol. 544] and sometimes they do not. Sometimes they mention it in the letter and sometimes they don't.

Q. Practically everybody in the National Tea Company knows that such allowances are given?

A. No.

Q. Isn't it a matter of common knowledge among supervisors, managers of the National Tea?

A. Not common knowledge, no.

Q. What is the reason this letter is not in the files of the National Tea Company?

A. Because I felt it was a confidential deal.

Q. Do you mean to say you have in your file all the letters passing between you and the National Tea at Chicago for the years you worked for them in regard to allowances?

A. No, there are thousands burned up, I would just stick them in my pocket and put them in my file at home.

Q. Why did you take them away?

A. If they were absolutely confidential I would take them. Sometimes they would be marked confidential on

the outside and I would read them and put them in my pocket.

Q. Depending on what was on the envelope?

A. No.

Q. Have you all the letters in your file at home passing between you and the National Tea Company at Chicago during the 15 years you were manager and relating to loans by the National Tea of Illinois to the National Tea of Delaware?

A. No, I think that is the only time I had a letter from [fol. 545] them on that. I think that is the only one.

Q. You say that is the only one that ever passed between you and the Chicago office pertaining to a loan?

A. No, but I don't remember of any others.

Q. I got the impression these loan transactions were going on from time to time?

A. Just occasionally I would have to ask for money and finally they took it over and sent me all the money I wanted.

Q. Whenever they sent you a check it was accompanied by a letter?

A. It might have been or with some other correspondence. The office manager might have gotten it sometimes.

Q. When you didn't know anything about it?

A. No, it might have come in and he said to me, "Here is the check," and kept the letter himself.

Q. In any of these cases where it came in without your asking for it, might it go to the office manager and you wouldn't know anything about it?

A. No, they wouldn't send me money without my asking for it.

Mr. Orfield: I object to this line of questioning as immaterial.

The Court: I suppose the matter is in regard to this letter at this time, it may be received.

Q. Showing you State's Exhibit 5, I call your attention to an entry reading, General Mills, Gold Medal, 7-1 to 9-1930, [fol. 546] $87.02, and ask you what that item was for?

A. I cannot say what it was for, it might have been for advertising Gold Medal Flour.

Mr. Doherty: I move that be stricken, the latter part.

The Court: It may be stricken.

A. We had other products from Gold Medal, it might have been Bisquick or Wheaties or some other item.

Mr. Doherty: I move that be stricken.

(Question read) Q. I cannot say exactly what it might be for.

Q. Did you sometimes receive advertising rebates from General Mills?

A. Yes.

Q. Did those advertising rebates run into considerable money?

A. Yes.

Q. Did your competing independent stores receive corresponding advertising rebates?

Mr. Doherty: If you know?

A. In my opinion I don't think they did.

Q. Do you know as a matter of fact whether or not it was customary for independent stores to get advertising rebates?

A. No, it was not customary.

Q. You are now an operator of a small chain. Can you as such a small chain operator get advertising rebates?

A. You can on handbills in a small amount.

Q. Can you get advertising rebates corresponding to the [fol. 547] size of the business in amounts to what you could get from the National Tea?

A. No.

Q. From your knowledge of doing business with the chain stores would you know whether or not it is true that the amount of advertising rebates, the unit of purchase tends to increase with the amount of purchases?

A. I don't understand your question.

Q. Whether or not you know from your experience as manager of chain stores of various sizes, whether the advertising rebate tends to increase with the volume of purchase. Do you get a larger rebate when you buy in larger quantities?

A. Yes.

Q. Larger in proportion to purchases?

A. Yes.

Q. Did the National Tea Company have an advantage in doing business over the small chain and the independent

store by reason of the fact that it could get this advertising rebate on account of its large purchases?

A. Yes.

Q. Will you state how deliveries of goods were made to the various store units in your chain?

A. By our own trucks.

Q. Why didn't you use the railroad in making deliveries?

A. To the country stores?

Q. Yes.

A. Because it was much cheaper delivering by truck.

[fol. 548] Q. Did you in your early experience, back in 1920, also deliver by truck?

A. We didn't have any country stores then but delivered by truck in the city.

Q. Did you deliver for awhile by railroad when you first got your country stores?

A. Yes.

Q. Did you deliver both ways?

A. Yes, at all times.

Q. You had a chance to make a comparison by railroad and truck?

A. Yes.

Q. How did you find it compared?

A. The truck was a saving.

Q. Was it a considerable saving?

A. Yes.

Q. How did your competing independent country stores get their goods, by railroad or trucks?

A. The average as a rule would get it by train except if they bought from their own jobbers in their own towns.

Q. Suppose the independent store was at Fargo. Now take Fergus Falls, how would such a store get its deliveries, by truck?

A. I don't know if there is a jobbing house there or not.

Q. Take a town in which there is no jobbing house. Would they get it by train?

A. There is some hauled by transfers but they charge the same as the train.

Q. Is it true that you having deliveries by truck and your competing stores having deliveries by rail, that you had an [fol. 549] advantage in delivering merchandise over your competing stores?

A. Yes, we could deliver merchandise cheaper than the independents could.

Q. Will you explain the method of delivery of orders for goods by a number of your chain stores in the country?

A. We would get the orders by mail and then we would have our warehouse put them up and then line up the trucks and they would load four or five stops. Sometimes we only got two towns on a truck and sometimes four or five.

Q. Having many stores by which you can deliver in this way, did it enable you to send out full truck loads in making deliveries?

A. We always had full loads and would send back eggs and save the freight.

Q. Did you always have full loads both ways?

A. We would have a full load, but a lot of it would be empty boxes and crates, and so forth. We had a department where we sold our bags, crates and boxes.

Q. Would a large chain like the National Tea in delivering in that way have an advantage over a smaller chain?

A. Yes.

Q. Would it have an advantage in this connection over the volunteer chains?

A. Yes.

Q. Did you have any standard policy with reference to the amount of the purchases made by the various stores of your group from the central warehouse?

[fol. 550] A. They could order as many cases as they thought they could use. There was a unit set for a certain district.

Q. Did you have a minimum limit?

A. Down but not up.

Q. In what way was that helpful to the company?

A. Elimination of a lot of broken lots.

Q. Did it result in economy in making deliveries?

A. We tried to get them to order once a month.

Q. Was the same minimum standard purchase policy operated with reference to independent stores?

A. Yes, but there are a lot of items the independents don't want to buy heavy on, slow-selling items. They don't carry as big a stock so would buy in smaller quantities.

Q. Because the independents were permitted to buy in smaller quantities would the overhead in serving them by the jobber be greater or less than your overhead?

A. Sure, a volunteer chain or jobber delivers in smaller quantities with more overhead. It would cost more to deliver in smaller lots than big ones.

Q. Would the result be that the independent would have to pay a higher price for his goods than your chain store would have to pay?

A. Oh, a substantial amount.

Q. You stated, I believe, that the National Tea had 13 stores when you became manager and over 200 when you quit?

[fol. 551] A. 12 or 13.

Q. Will you explain what policy you used after opening a new store in order to bring the trade to your store?

A. We would handbill it, cut the prices. The handbills and cut rate prices would be the biggest help we would have.

Q. Did you use what is known as loss-leaders?

A. Yes, a lot of them.

Q. Explain what is meant by a loss-leader?

A. Items you would put on sale as close as possible, not under the actual cost but without the overhead attached to it, such as flour, sugar, soap and other items. We would call them the hot shots. They would be sold at nearly cost.

Q. What was the purpose?

A. In order to get the business.

Q. Was it effective?

A. Yes.

Q. What effect did it have on your competitors?

A. The small competitor next door could not have the same weapon as we had. If we are gaining somebody else is losing.

Q. Did your competitors lose the same amount of trade that you gained?

A. I don't know but some of them would finally close up and move away, many of them did.

Q. You have had an opportunity to observe this competition going on in a large number of localities. From that observation state whether you succeeded in a large number of instances in eliminating your competitors?

[fol. 552] A. Not all together but many of them.

Q. In choosing new localities, what factor did you consider in deciding whether a given location was satisfactory?

A. It would depend on the neighborhood. I would look up the neighborhood, see if people owned their own homes and if they were paid for and what business the other stores

were doing and if there were two or three chain stores there in that neighborhood I would keep away from that place.

Q. You mentioned the fact that in considering the desirability of a new location the question of whether or whether or not there was a chain in the neighborhood. Why was that a factor?

A. Because the chain store was competition but the retail was not competition at all.

Q. You mean the independent?

A. Or the volunteer or any of them.

Q. After having succeeded in establishing your store and eliminating a portion of the competition, what would your price policy be then?

A. We would not have to fight so hard then.

Q. Would you then use loss-leaders?

A. Yes, we always used them but not so extensively.

Q. Would the price you charged vary with the keenness of your competition?

A. Yes.

Q. Did it vary to a considerable extent?

A. I would say a cent or two on an item maybe.

Q. Did you sell fruit and vegetables in your stores?

[fol. 553] A. Yes.

Q. Will you explain where you purchased most of the vegetables?

A. The fresh vegetables?

Q. Yes.

A. On the market except in the summer time.

Q. Which market?

A. Produce market in Minneapolis, except in the summer when we could get them from the farmers. We would go out and buy directly from the farmers and they would haul it in to us.

Q. Generally speaking did you purchase most of the vegetables for the country units from the Minneapolis market?

A. Minneapolis market, the majority of them.

Q. Did you sometimes make loss-leaders of the vegetables in the country?

A. No, not so much. Vegetables are not so much in the summer time in country towns.

Q. Did you say you had an advantage in the sale of vegetables over the independent store competitors by reason of the fact the Minneapolis market was open to you?

A. Yes.

Q. Would the fact you brought in the vegetables to the country stores nearby from the Minneapolis market tend to lower the price of vegetables in the country towns in which you had your stores?

A. It would be likely to. We had a lower price than the competitors would have and that would affect the market.

[fol. 554] Q. Was there a tendency for the volunteers in these towns where you had your local stores to get less for their vegetables by reason of the fact that you had your stores there and brought in the vegetables from the Minneapolis market?

Mr. Doherty: Objected to as immaterial.

The Court: He may answer if he knows.

Mr. Doherty: What is the purpose of that line of testimony?

Mr. Orfield: We are considering the validity of this tax. It is perfectly permissible for the legislature to consider other effects of a tax measure besides merely the question of revenue.

(Argument by counsel.)

(Question read.)

Q. You state that you purchased most of your vegetables in the Minneapolis market. State how the price of the vegetables was fixed?

A. We would get a price on them a little different than somebody else, but when we bought from the farmers we set our own price.

Q. Was that price set a low price?

A. Most of the time.

Q. How did the price you set for the farmers from whom you purchased compare with the average price paid by your competing independent stores?

A. We would be lower.

Q. Was it considerably lower?

A. Yes.

Q. Were you able to get a lower price for such vegetables by reason of your large scale purchases?

[fol. 555] A. Yes.

Q. Did you take all or nearly all of the produce of several truck growers?

A. Some of them, yes.

Q. Did these truck growers give you such a low price because they had a sure market for their product?

A. I think so.

Q. Is it true then that by reason of your size you were able to purchase these vegetables at a lower price than you could have done if you had been a small chain or an independent store?

A. Yes.

Q. Are you familiar with the comparative turn-over of the stores of the National Tea Company with the average turn-over of the competing independents?

A. We had a bigger turn-over, more often.

Q. Was this turn-over considerably greater than that of the independent stores?

A. I think so.

Q. Turning now to the question of fixtures, will you state what was the policy of your company with reference to the matter of standardization of fixtures?

A. We had them as near standard as we could.

Q. What was the advantage?

A. It makes the stores look alike. If a customer moves from one place to another the items would be in the same place and the stores would look alike.

Q. Would independent stores competing with you have a corresponding advantage?

[fol. 556] A. Some of the volunteers tried to make their stores uniform in the latter years.

Q. Did they pursue that policy as far as your company did?

A. No, they would remodel them.

Q. Would you sometimes move the fixtures from one store to another?

A. Yes.

Q. And would the fact the fixtures were standard make such moving easier?

A. That would be easy to do because the shelving would be in sections and the other fixtures in pieces so they could be moved easily.

Q. Did your company have any policy with reference to the amount of stock carried on the tax date for personal property, May first?

Mr. Doherty: Objected to as incompetent, irrelevant and immaterial.

The Court: He may answer yes or no.

(Question read.)

A. Yes.

Q. What was that policy?

A. We tried to carry as low as we could on that date.

Q. Did you as a matter of fact carry lower stocks on May 1st of any given year than your average at other times?

A. Yes.

Q. In so doing, did you effect a saving in the amount of your personal property tax?

A. A small amount.

Q. Was it possible for your competing independent stores [fol. 557] to pursue that policy to the same extent?

A. I imagine they tried it but I don't think they could do it to the same extent because we had a better control on things than the independent or volunteer chains could have.

Q. Does the National Tea of Illinois manufacture any of the goods it sells?

A. A few items. They pack quite a few items.

Q. Will you mention the leading items manufactured by the National Tea of Illinois?

A. Peanut butter and beverages, candies and jellies. That is all they manufacture but they pack quite a few.

Q. Did your company purchase a supply of the items they manufacture from the parent company?

A. Yes.

Q. Will you compare the cost of these items so manufactured and purchased by you with the cost of the same or corresponding items in the open market?

A. There is quite a saving on that.

Q. Did you find you had a considerable advantage in your affiliation with the National Tea of Illinois by reason of the fact you could purchase items manufactured by them in this way?

A. I think so.

Q. Did the independent stores competing with you have a corresponding advantage?

A. No.

Q. Did the volunteer chains have a corresponding advantage?

[fol. 558] A. No.

Q. Will you state the amount, the approximate amount of your advertising in the newspaper per year?

A. In dollars and cents?

Q. Yes, approximately.

A. Somewhere between one hundred and fifty to two hundred thousand dollars in a year.

Q. Where was most of this advertising carried?

A. I think the majority would be in the Twin Cities.

Q. Did you find by reason of the fact you carried a vast amount of advertising in the various papers of the Twin Cities that that had any affect on the attitude of the Twin City Press toward you and other chain stores?

Mr. Doherty: Objected to as incompetent, irrelevant and immaterial.

The Court: He may answer if he knows.

A. Yes.

Q. What was that effect?

A. Very friendly with us.

Q. By reason of that fact would it be true that the Twin City Press refrained from carrying news items unfavorable to chain stores?

A. Absolutely.

Mr. Doherty: I move the answer be stricken for the purpose of making an objection.

The Court: Stricken.

(Question read.)

Mr. Doherty: The same objection.

[fol. 559] The Court: He may answer yes or no.

A. Yes.

Q. Do you know whether the Twin City Press refrained from carrying news items unfavorable to chain stores by reason of the fact you carried a large amount of advertising with them?

A. Yes.

Q. Will you state whether they did as a matter of fact refrain from carrying any news items unfavorable to you by reason of your advertising connection?

Mr. Doherty: Objected to as incompetent, irrelevant and immaterial, calling for a conclusion of the witness.

The Court: He may answer if he has the personal knowledge.

Q. Did you personally meet and consult with the managing heads of the various Twin City papers with reference to the matter of news they would carry pertaining to chain stores?

A. Yes.

Q. In such consultations did they indicate to you what their attitude would be with reference to chain store news?

A. Yes.

Q. Will you state what attitude they did indicate?

A. They told me they would see that nothing went in that was a detriment to us as near as they could.

Q. Did they to a considerable extent as a matter of fact keep out of their columns news harmful to the chain stores?

[fol. 560] A. Lots of it.

Q. Did that fact assist you in your business, the fact they refrained from printing unfavorable news?

A. I think it did.

Q. And would the publication of such news hurt you?

A. Sometimes.

Recess, 30 minutes.

Q. Mr. Landin, did you have supervision of the banking of money of the National Tea Company?

A. Yes.

Q. What policy did you pursue with reference to the banking of that money, as to the stores in the country district?

A. It was banked in the town where we had the store. Then we would re-drawn it somewhere by draft.

Q. What was the amount of balance which you carried in the country bank?

A. It varied, but a very small balance.

Q. About how long would you leave a deposit made in the country bank in such bank?

A. A day or two or three.

Q. How did your policy with reference to this matter compare with that of your independent competing store?

A. He would bank in his own town and keep his money there.

Q. Where did you keep the bulk of the company's money?

A. In the Minneapolis banks.

[fol. 561] Q. Was the result of that system of operation to transfer money balances from the banks of the country to the big banks of the Twin Cities?

A. Yes.

Q. Would it be true that such method of banking would tend to be injurious to the small country banks?

Mr. Doherty: Objected to as incompetent, irrelevant and immaterial, the witness is not qualified to testify on that.

The Court: Objection sustained.

Q. Did any of the bankers in these local towns where you banked try to persuade you to keep larger balances there?

A. Yes.

Mr. Doherty: I move the answer be stricken.

The Court: Stricken.

(Question read.)

Mr. Doherty: Objected to as incompetent, irrelevant and immaterial.

The Court: How is it material?

Mr. Orfield: For the same reason that the question of this company's policy in the sale of vegetables injuring the farmer was material. This is the police power aspect of the law and if the policies of the chain stores are injurious to a considerable group, the legislature may take note of it.

The Court: Objection sustained.

Q. From your long experience in the merchandising field in Minnesota, would you know what was the effect of the coming in of the chain stores on the jobbers of the Twin Cities?

[fol. 562] A. Yes.

Q. Will you state what that affect was?

A. Many of them closed up in the last few years, gone out of business. It must have injured their business because we didn't buy anything from the jobbers.

Q. Is it true that substantially the entire business of the larger chains in Minnesota was transferred from the local jobbers to other sources?

A. Yes.

Q. Do you know what effect the chain store had on the business of the traveling salesmen calling on local stores?

A. Yes.

Q. What was the effect?

A. There was a lot of them eliminated, many of them. After the jobbing houses went out of business the salesmen would be eliminated also.

Q. Would you say it affected the elimination of a considerable number of traveling salesmen?

A. Yes.

Q. Did it then add to unemployment in Minnesota?

A. I think it did to some extent.

Q. Testimony has been given showing that the National Tea Company now has fewer stores than it did three years ago. From your own experience in the business would you know whether it is possible to eliminate stores without taking a loss. Answer yes or no.

A. Yes.

Q. Will you state whether it was your experience that [fol. 563] when you closed stores your company took a loss in connection with that transaction?

A. Some loss, yes.

Q. You mean on business or fixtures?

A. I mean a loss by reason of that transaction.

Q. So the balance sheet at the end of the year would tend to show losses by reason of the elimination of the stores?

A. Yes, there would be a loss.

Q. Would it then be true that the losses suffered by the National Tea in the last three years would be due in part to the reduction in the number of stores?

Mr. Doherty: Objected to as calling for a conclusion of the witness.

The Court: You had better confine it to his experience.

Q. You stated, I believe, that at the time when you terminated your relationship with the National Tea you were personally acquainted with nearly all the men working in the various stores throughout the State?

A. The majority of them.

Q. Have you been sufficiently in touch with them since you terminated your connection to know whether there has been a large turn-over in that personnel since 1933?

A. Yes.

Q. Will you state how great that turn-over has been?

A. I don't know how great, but a great many of them. [fol. 564] Q. Would you know how that turn-over has compared to the average turn-over while you were in charge?

A. It would be more.

Q. What was your experience while you were chain store manager as to the effect on the success of the business of a rapid turn-over in personnel?

A. It would injure your business to make changes in your help.

Q. Explain why.

A. If a man has been there a few years he knows people and if he gets laid off he opens his own store or goes next door and takes customers with him. Whenever you change personnel in a store it hurts the store materially.

Q. You had occasion from time to time to rent new stores. Will you state on what basis you calculated in determining the rental you could afford to pay for such new stores?

A. I would try to get it as low as I could and if it was worth more I would come up and then we would try it on a percentage of sales, but sometimes you couldn't do that.

Q. Did you succeed in making your contracts on the basis of percentage of sales in a considerable number of cases?

A. No, not in many cases, because the leases were for five years and were just expiring when I left, but I did try it in a couple places.

Q. And what was the basis?

A. Two and three-quarters per cent on gross sales.

[fol. 565] Q. Do you know whether that basis of rental has become a customary basis among chain stores?

A. It has during the last two or three years, very much so, nearly all of them.

Q. In your connection with the chain store business, did you notice any relationship between the amount of gross sales in a given store and rate of profit from that store?

A. Yes.

Q. What was that relationship, the rate?

A. It would depend on the sales of the store, the bigger the sales usually the better return on the profit. The more sales you have your overhead goes down and the net profit goes up.

Q. Was that a general experience among the majority of your stores?

A. Yes, on many of them.

Q. From your experience in general store business, do you know whether there is any relationship between the size of a chain and the rate of net profit in a number of stores?

A. It would depend on how many warehouses and how much ground they cover.

Q. If a man had one warehouse then the more stores he operated out of that warehouse the overhead would be less?

A. But with more warehouses the overhead would be a different proposition.

Q. As a general rule, then would you say there is a relationship between the size of the chain and the rate of net profit?

A. Yes.

[fol. 566] Q. And does that rate of net profit go up and down with the size of the chain?

A. It depends on circumstances. It would go up if you supplied 500 stores out of one warehouse. Then you show more profit than if you supply only two hundred stores out of that same warehouse. It depends if they are all in one state or one town.

Q. Which is the largest of the chain stores operating in Minnesota?

A. I think the National Tea is the largest today in the state but the A&P is the largest in the group over all the country.

Q. In connection with large scale purchases did you ever have the experience of buying in larger quantities than you thought you could use?

A. Not very often, but it has happened.

Q. In such a case was there any arrangement which you could make with the parent company to relieve you of the excess purchase?

A. It could be done.

Q. I show you State's Exhibit 6 and ask your what that is?

A. It is a letter from the National Tea of Chicago dated September 15, 1923, to me.

Q. What is the general subject matter of the letter?

A. I was overloaded on a thousand cases of soap chips and asked them to take them off my hands.

Mr. Orfield: Offer in evidence States Exhibit 6.

By Mr. Doherty:

Q. This letter written to you from the Chicago office dated [fol. 567] September 15, 1923, relates to the question of taking some surplus stock off your hands. Did you have that in Minneapolis?

A. Yes.

Q. How did you happen to have this letter from the files of the National Tea Company?

A. The same as the others.

Q. Is there anything confidential about this letter?
A. I don't know whether or not there is.
Q. Then you don't think it was confidential?
A. No.
Q. When did you take it out of the files?
A. In 1923.
Q. And where did you keep it?
A. In my desk at home.
Q. Was that the place for it?
A. If I thought I wanted it there it was.
Q. Anything from the National Tea you wanted you took home with you?

Mr. Orfield: That is objected to as immaterial.
The Court: He may inquire as to the possession of the letter.

(Question read.)

A. I didn't think it would make any difference to the National Tea if I had it home or in the office, it was there so long it didn't make any difference. It was there for years.
Q. The National Tea Company didn't have any office at your home?
A. Practically, 24 hours a day.
Q. You made it so by taking your office letters home?
[fol. 568] A. No, I had office hours at the house as well as at the office.
Q. Why didn't you take these letters back when you left the company's employ?
A. I didn't think of it.
Q. You thought of it the other day?
A. I was subpoenaed to bring them here.
Q. I ask you from the time you left this office in 1933 until the subpoena was served on you the other day, whether you didn't know you had these files of the National Tea at your house?
A. I knew I had that stuff but I had no reason to look at it, I just forgot about it.
Q. Did you have any occasion to keep it?
A. I had no occasion, I knew it was there. I had letters there for 25 years
Q. But you kr w it belongs to the National Tea.
A. I have kept checks for 20 years, I kept anything I left there.
Q. Have you any National Tea checks at your house?
A. No.

Mr. Doherty: Objected to as incompetent, irrelevant and immaterial.

The Court: It may be received for what it is worth as to the method of the organization.

Q. With reference to the transaction referred to in State's Exhibit 6, did you as a matter of fact save yourself a loss by reason of the existence of the parent company?

A. There would have been eventually a loss. I don't [fol. 569] remember the date because it is so long ago but the chances are there would have been a loss because it would have taken a year or two to sell the stock.

Q. Did you from your general experience find that from time to time the parent company would save you the necessity of a loss when you found yourself overloaded?

A. Yes, they would if I took the question up with them.

Q. Would your independent competitors have the same way of relieving themselves of a loss when they found they were overstocked?

A. No.

Q. Would it be true your company had a merchandising advantage with reference to this matter by reason of your connection with the National Tea of Illinois?

A. Yes.

Q. Would the volunteer chains enjoy a corresponding advantage in such a situation?

A. No.

Q. Would the National Tea of Illinois sometimes make large scale purchases of which your company had the advantage?

A. Yes.

Q. The National Tea maintained an extensive purchasing department?

A. Yes.

Q. And you had the advantage of that extensive purchasing department?

A. Yes.

[fol. 570] Q. Did that effect a saving for you?

A. Yes, it did.

Q. I show you State's Exhibit 7 and ask you to state what that is?

A. It is a letter from the National Tea of Chicago dated June 1st, 1928, with reference to sugar to me.

Mr. Orfield: Offer in evidence State's Exhibit 7.

By Mr. Doherty:

Q. Who is O. C. Mattem?

A. He was a buyer, but he is dead now.

Q. He was attached to the Chicago office?

A. Yes.

Q. This is a letter written from the Chicago office of the National Tea to O. H. Landin, Minneapolis. When did you take this out of the files of the National Tea?

A. I couldn't say, at that time I believe.

Q. There is nothing confidential about this, is there?

A. In a way there is.

Q. That wasn't the reason you took it out of the files of the National Tea Company?

A. Well, sugar was a very confidential item.

Q. But that wasn't the reason you took it out of the files of the National Tea Company?

A. I couldn't just say whether or not it was at that time.

Mr. Doherty: Objected to as incompetent, irrelevant and immaterial.

The Court: What is the purpose of this letter?

Mr. Orfield: It shows the fact of an arrangement be- [fol. 571] tween the National Tea of Delaware and the National Tea of Illinois whereby the parent company purchased in large quantities for the Minnesota company, thereby showing an advantage.

The Court: It may be received to show the working system of the organization.

Q. Mr. Landin, would the fact that you had this connection with the National Tea of Illinois under which they made large scale purchases and you purchased from them, give you a competitive advantage over independent stores and volunteer chain stores that didn't have this connection?

A. Yes, it would.

Q. Was there a considerable saving in cost to your company in this way by reason of its connection with the National Tea of Illinois on an item like that, when it was done?

A. There was a saving but that wasn't done as a regular thing.

Q. Isn't it true, however, that it happened frequently enough so it became an item of considerable consequence?

A. Oh, yes.

Q. I show you State's Exhibit 8 and ask you what that is?

A. It is a letter from Chicago National Tea Company directed to me on March the 23rd, 1929, in reference to a confidential allowance on some merchandise.

Mr. Orfield: Offer in evidence State's Exhibit 8.

By Mr. Doherty:

Q. Who is J. Dowd?

[fol. 572] A. I don't know who that is.

Q. Not a person of any prominence in the organization?

A. I think it is one of the secretaries, he was at that time.

Q. This is dated March 23rd, 1929?

A. I think he was a secretary.

Q. This is addressed to O. H. Landin, National Tea Company, Minneapolis, at the Minneapolis address. This letter was marked confidential and is the only one of the letters so far offered in evidence which was so marked?

A. That was very confidential.

Q. I asked you if this was the only one of the letters offered in evidence which was so marked?

A. I don't know.

Q. You saw them all, didn't you?

A. Whatever I have seen so far, yes.

Q. Do you know when this letter was taken out of the files of the National Tea Company?

A. I imagine at that time.

Q. When it was received?

A. Yes.

Q. And has it been in your possession ever since?

A. In my desk.

Q. Why wasn't this turned over to your successor at the time you left the National Tea's employ?

A. I didn't know of any reason why it should be and didn't think anything about it.

Q. To your mind there was no reason why the company's [fol. 573] correspondence should be turned over by you to the National Tea Company?

A. No.

Q. That is your conception of your duty to the National Tea Company?

A. I don't know about *by* duty, there was nothing to it. I didn't think after it occurred there was anything to it. I just put it away. They had no occasion to use that letter.

Q. That was a matter for them to decide, not for you to decide?

A. I decided it that way, I don't know who was to decide it.

Q. Did you think it might be of some future use to you?

A. No, I hadn't thought of it at all.

Q. Why have you kept it ever since?

A. I have no reason at all.

Mr. Doherty: Objected to as incompetent, irrelevant and immaterial.

A. If I figured I wanted to make use of it I could have made use of it a long time ago.

Q. Did you take it from the files of the National Tea or take it home in your pocket in the usual course of business as any other correspondence?

A. Yes, I did.

The Court: It may be received.

Q. Showing you State's Exhibit 8, do you know why this letter was marked confidential?

A. It was very confidential.

Q. Was it customary for the Diamond Match Company to [fol. 574] conceal the rebates given to your company?

Mr. Doherty: That is objected to as calling for a conclusion of the witness.

The Court: I don't suppose he has any knowledge of that.

Q. Did you have any conference with any representative of the Diamond Match Company with reference to whether matters of this character were to be kept confidential?

A. Not with the match company but with the officials of my company.

Q. You conferred with the officials of your company?

A. Yes.

Q. And had they conferred with the Diamond Match Company?

A. They undoubtedly had or they would not have conferred with me on the subject.

Mr. Doherty: I move that be stricken as a conclusion of the witness.

The Court: Stricken.

Q. Did you from time to time receive other special rebates from the Diamond Match Company in connection with large scale purchases?

A. Yes.

Q. Will you state what was the nature of your conferences with the officials of the company with reference to confidential rebates?

A. The President of the Company told me anything of that kind was strictly confidential between him and me on all of those confidential deals.

[fol. 575] Q. Did he make any statement with reference to the rebates given by the Diamond Match Company?

A. Yes, that was a very particular thing. He told me they would have a hard time with the Diamond Match Company if it got out and it was very confidential and I should keep it that way.

Q. Do you know whether the independent stores competing with you received similar special rebates?

A. I don't think so.

The Court: The question is whether or not you know.

A. I cannot say, I cannot say that I know. In my opinion they were not given special rebates.

Mr. Doherty: I move that be stricken as not responsive.

The Court: Stricken.

The Court: The question is whether or not you know.

A. No I do not know.

Q. As the operator of a small chain are you able to get rebates from the Diamond Match Company in connection with your purchases?

A. I don't handle them.

Q. From your experience as a general store manager do you know whether special rebates of the character of this rebate from the Diamond Match depended on large scale purchases?

A. Oh yes.

Q. Does the amount of such rebate grow larger per unit as the purchases increase?

[fol. 576] A. I don't just know but I imagine it would.

Mr. Doherty: I move that be stricken as not responsive.

The Court: The latter may be stricken.

Q. Taking the matter in general, do you know whether special rebates increased in rate with the size of the purchase? Answer yes or no.

A. Yes.

Q. What is the fact with reference to their increase or decrease?

A. On big scale buying you get a better deal the more you buy. You get a better deal on ten thousand than one thousand cases.

Q. Do you get a bigger rebate per unit?

A. We would get a better price but on some things where you get a rebate, you might get a bigger rebate for a certain purchase during a certain time.

Q. Showing you State's Exhibit 9 I ask you to state what that is?

A. It is a letter from the National Tea of Chicago to me, dated February 25th, 1931 and it is a confidential discount for merchandise.

Mr. Orfield: Offer in evidence State's Exhibit 9.

By Mr. Doherty:

Q. This letter was also signed by J. Dowd and who did you say that was?

A. That is a lady. It is a secretary of the President or the Vice President of the Delaware Company. It is a lady if I remember correctly.

Q. How long have you had possession of this letter?

[fol. 577] A. Since 1931 I guess.

Q. It is dated February 25th, 1931?

A. About that time. Whenever I got it I put it in my pocket.

Q. Do you remember that?

A. I did it with all of them. It was the usual thing I did on anything like this.

Q. Do you mean to confine it to confidential rebates?

A. Yes, anything I would think was confidential. Rates or discounts were considered confidential whether it was mentioned in the letter or not.

Q. You are confining what you say now as to your habit of putting letters in your pocket and taking them home, as to confidential rebates?

A. It said confidential rebates.

Mr. Doherty: Objected to as incompetent, irrelevant and immaterial.

The Court: It may be received as showing the method of doing business.

Q. Referring to State's Exhibit 9 was it customary for your company to get special rebates from the Wrigley Company in connection with large scale purchases?

A. Yes.

Q. Would you know whether your independent stores competing with you got corresponding rebates in connection with their purchases?

A. The independents would never get the rebates. The large chains might get them, I think that was a common thing but not among retailers. I know I never could get a rebate since I have been in business.

[fol. 578] Q. Do you handle products of the Wrigley Company now?

A. Yes.

Q. Are you able to get special rebates now?

A. No.

Q. Why not?

A. I don't buy in large enough quantities to make it worth while if I did get it. It is on quantity buying that discount comes in.

Q. I now show you State's Exhibit 10 and ask you to state what that is?

A. That is a National Tea Company letter from Chicago dated April 7th, 1931 to myself enclosing a check for a confidential allowance on merchandise.

Mr. Orfield: Offer in evidence State's Exhibit 10.

Mr. Doherty: The same objection.

The Court: Received on the same ruling.

Adjourned until 10:00 A. M. Thursday.

Q. Mr. Landin, when you were in charge of the business of the National Tea of Delaware was it customary for you to deliver the purchases made to the customers?

A. Not customary.

Q. Did you make no deliveries?

A. We made some with boys and charged the customer five cents for an order. Some boys would come after school and deliver for us.

Q. You testified that you also operated an independent grocery. Did you make deliveries in connection with that business?

[fol. 579] A. Yes.

Q. Do you know the cost of making deliveries as a factor in the total cost of the article sold?

A. It is quite a cost.

Q. Within limits could you state what that cost is?

A. It would be two, three per cent of the gross sales.

Q. Then would it be true in the matter of delivery that the chain store effects a saving in cost of operation by reason of the fact they do not deliver?

A. Yes.

Q. Did you while in the general chain store business as manager for the National Tea give credit?

A. In a small way.

Q. Will you explain to what extent?

A. It would be a small percentage and the store manager would be held responsible for any credit given.

Q. Then would it be true the company could suffer no loss by reason of the extension of credit?

A. Not any amount, there might be here and there a small amount.

Q. As the operator of an independent grocery did you give credit?

A. Yes.

Q. Did you suffer any losses by reason of giving credit?

A. Yes we have.

Q. Is the item of giving credit a considerable factor in the cost of doing business?

[fol. 580] A. It is if you figure the losses.

Q. Would you know within limits what the losses would average?

A. Yes.

Q. What is the extent of those losses in percentage of the credits given?

Mr. Doherty: Just a minute. Are you basing your answer on your own experience as an operator of two or three stores in Minneapolis?

A. My answer would be on that but mine may be lower than the average.

Mr. Doherty: But on what are you basing your figure?

A. I will give my own figure.

Mr. Doherty: You are basing your answer on your experience in the operation of two or three stores in Minneapolis and nowhere else?

A. Yes.

Mr. Doherty: Objected to as incompetent, irrelevant and immaterial, not comparable situations.

The Court: Better lay a better foundation from his experience while manager.

Q. From your 25 years experience in the matter of merchandising as the operator running a single store, a large chain and a small chain, did you become familiar with the method of giving credit in all these various lines of business?

A. Yes.

Q. Did you observe and secure information as to the giving of credit by stores operating in these various lines outside of your own?

[fol. 581] A. Yes.

Q. Have you information of your own knowledge as to the giving of credit and the cost of giving of credit generally?

A. I don't know the cost in money except my own business.

Q. Don't you know?

A. The average would be the same as my own.

Mr. Doherty: I move that be stricken as not responsive and a conclusion of the witness, no foundation.

The Court: It may be stricken.

Q. From your 25 years of experience in the field of merchandising are you able to state whether the giving of credit is a factor in the cost of merchandising?

A. Yes it is.

Mr. Doherty: He asked whether or not you are able to state?

A. Yes.

Q. Is it a factor?

A. Yes.

Q. Is it a considerable factor in the cost of merchandising?

A. It is quite a factor, yes.

Q. Does the chain store have an advantage over the independent store by reason of the fact they have suffered substantially no losses by giving credit?

A. I would say so.

Q. You have testified that you have been engaged in business either as manager of a large chain, an independent [fol. 582] store or a small chain during the past 26 years.

As such have you had occasion to observe whether the depression has had an effect on the net income of the chain stores in the grocery field?

A. Oh yes.

Q. What has that effect been?

Mr. Doherty: Have you had occasion to observe that with respect to any other business except the National Tea and your own stores in Minneapolis?

A. In reading records and reports.

Mr. Doherty: The question was as to your observation?

A. I have observed the reports of different companies which are open to the public. Anybody can see them. They have all gone down.

Mr. Doherty: I move the last part be stricken.

The Court: It may be stricken.

(Question read)

Mr. Doherty: Objected to as incompetent, irrelevant and immaterial, without foundation unless confined to the business of the National Tea.

The Court: I think this man has qualified himself, being in the business. From his experience he is qualified to testify. He may answer the question.

(Question read)

A. It has lowered the sales and therefore there would be a less income.

Q. Has that been the general experience of chains in the grocery field during the last five years?

[fol. 583] A. Well, all but maybe the last year. There has been a little increase in the last year.

Q. In your long experience in merchandising, did you become familiar with the various merchandising methods of your competitors in the chain store grocery field?

A. Yes.

Q. From such knowledge, can you state whether your chain store competitors in the grocery field enjoy substantially the same advantages in merchandising as you have testified the National Tea enjoys?

A. Yes.

Q. Do such competitors enjoy substantially the same advantages?

Mr. Doherty: I move that be stricken for the purpose of making an objection.

The Court: It may be stricken.

Objected to as without foundation, incompetent.

The Court: If he says he knows, I suppose he is qualified. He may answer.

A. Yes.

Q. Mr. Landin, I show you State's Exhibit 11 and ask you to state what it is?

A. That is a form letter from Karo Corn Products Company, a copy of the merchandise brought and special discount shown, but no date.

Q. Do you know approximately when that letter was received by you?

A. I cannot say the date but sometime between 1930, 31 or 1932.

Q. Was it received by you in the regular course of the business of the National Tea?

[fol. 584] A. Yes.

Mr. Orfield: Offer in evidence State's Exhibit 11.

By Mr. Doherty:

Q. Who is this letter from?

A. Karo Corn Products Company.

Q. It isn't signed by anybody?

A. No.

Q. So all the identities are the words "Company letter" and "National Tea Company?"

A. Yes.

Q. Can you say whether you received this from the Karo Corn Products Company or not?

A. Yes.

Q. How do you know?

A. I wouldn't have it if I didn't.

Q. But you might have received it from somebody else, from the National Tea of Chicago?

A. That could be possible.

Q. It isn't a letter at all?

A. No, it is a statement showing the amount of the purchases. There wouldn't be any reason for the company to send me that. I might have asked for the quantities.

Q. Was it handed to you or did it come through the mail?

A. That I don't know, whether it was handed to me or sent through the mail.

Q. Did it come to you at the office of the National Tea?

A. I might have met him on the street or in a store. I couldn't just say where. The salesman might have handed it to me when he left me.

[fol. 585] Q. You don't know when?

A. No, but it was sometime in the latter years because there is quite a quantity there.

Q. Why isn't this document in the hands of the National Tea Company?

A. Because it was made out and given to me.

Q. It wasn't given to you as an individual George Landin?

A. My name isn't George, I don't like to be called George.

Q. I apologize. What are your initials?

A. Q. H.

Q. This letter came to you as manager of the National Tea?

A. It might not, but I was manager at that time.

Q. It wouldn't come to you otherwise?

A. No, no manufacturer would have given me such information otherwise.

Q. You aren't making any claim this came to you in any other capacity except as manager of the National Tea?

A. No.

Q. Therefore it is a document that belongs to the National Tea?

A. I doesn't belong to them.

Q. Who does it belong to?

A. It belongs to me.

Q. How does it come to be your property?

A. Because I have got it.

Q. Anything in your possession is your property?

[fol. 586] A. Anything in my pocket is mine.

Q. Is that your idea of property rights?

A. No, but——

Mr. Orfield: Just a minute.

Q. Have you any other explanation to make why this document is not in the files of the National Tea than you have made to any other document?

A. No.

Mr. Doherty: Objected to as incompetent, irrelevant and immaterial, no proper foundation.

The Court: What is this?

A. It is a report of the quantities I bought during that period, in any year from 1929 to 1932 and shows the discounts on them. The special quantity discounts.

The Court: It may be received to show——

Mr. Doherty: May I ask another question.

By Mr. Doherty:

Q. You haven't any independent knowledge as to whether you actually did buy the merchandise shown on this statement and whether you did actually receive those discounts or special prices except as it appears on the document?

A. No, they have the same record in the National Tea office.

Q. That is not the question.

A. That is the only way I have of telling.

Q. You don't know who gave it to you?

A. One of their men, either a salesmen or——

Q. Which one?

A. I couldn't say, the one who called on us.

[fol. 587] Q. You haven't any recollection of anybody calling on you and giving you this document?

A. I might have asked for it and a salesman might have brought it to me.

Q. But you haven't any recollection of who gave it to you?

A. No.

Q. Whether it was given to you on the street or in the office?

A. No.

Q. Or when?

A. No.

A. Or what year?

A. No, I cannot remember that.

Mr. Doherty: Objected to as incompetent, irrelevant and immaterial, without foundation.

Mr. Orfield: But you know it was given to you by the Karo Corn Products Company in the usual course of the business of the National Tea?

A. Yes sir.

The Court: It may be received along the lines of showing the advantages or disadvantages.

Q. Referring to State's Exhibit 11, there is an item reading "Karo, 906 cases—three per cent—$68.19." Will you explain what that statement refers to?

A. That would be 906 cases at a special price and three per cent of that cost price would be $68.19.

Q. What does the three per cent represent?

A. It is a special rebate over and above the jobbers discount we received. It was a special allowance for chain stores on quantity buying.

[fol. 588] Q. And is the same thing true of all the other items?

A. Yes, it is the same thing all the way through the letter.

Q. As the operator now of a small chain, are you able to get corresponding discounts from the same firms?

A. No.

Q. Are you able to get any discounts at the present time on quantity purchases?

A. There are some small discounts on a few items.

Q. But you cannot get as large quantity discounts?

A. No, there are only two or three items that I know of.

Q. Would it be true that a large chain like the National Tea enjoys an advantage in purchasing from the Karo Corn Products Company by reason of their large scale purchases over a small chain or an independent?

A. Yes.

Q. I show you State's Exhibit 12 and ask you to state what it is?

A. It is a letter from the National Tea of Chicago dated March 23rd, 1929 addressed to myself.

Q. I show you State's Exhibit 12-A, I will ask you what that is?

A. A letter from the National Tea dated October 16th, 1929 addressed to myself, enclosing a check for a confidential allowance on some merchandise.

[fol. 589] Q. Showing you State's Exhibit 12-B, what is that?

A. It is the same thing, a letter from the National Tea in Chicago dated March 28th, 1931 addressed to myself.

Q. Showing you State's Exhibit 12-C, what is that?

A. A letter from the National Tea dated June 4th, 1931 addressed to myself.

Q. And showing you State's Exhibit 12-D, what is that?

A. It is a letter from the National Tea dated July 14th, 1931 addressed to myself.

Q. Were these various letters which I have shown to you received by you in the usual course of your business with the National Tea?

A. Yes.

Q. Do they relate to the company's business?

A. Yes.

Mr. Orfield: Offer in evidence State's Exhibit 12, 12-A, B, C and D.

By Mr. Doherty:

Q. Three of these letters are signed by J. Dowd. Is that the same person who signed the other letters?

A. Yes.

Q. Would you say that was a girl or a man?

A. It is a girl if I remember right. She was secretary to the vice president at that time. He is president right now of the Illinois company and I think she was his secretary at that time.

Q. State's Exhibit 12-B, what is the pencil notation in the left hand corner?

[fol. 590] A. I don't know what that is. If it is "dep." it might be deposit. I don't know just what that would mean.

Q. Do you know by whom that notation was made?

A. No.

Q. Whether it was on the letter when you got it or whether it was put on in your office?

A. I couldn't say when it was put on.

Q. There is nothing to suggest it was on there prior to its receipt in your office?

A. No.

Q. The letter of June 4th, being State's Exhibit 12-C, contains a similar notation, "deep—6-4 with a capital B." Do you know what that means?

A. That might have been the office manager's initial and it might be department, 6-4. It might be the date or it might be a deposit.

Q. Do you know whose initial it is?

A. It might be Bosiger, but I don't—that it is.

Q. You would infer that notation was put on there after it was received by you and that it is department?

A. I don't know.
Q. What is your inference on it?
A. It would only be a guess, I don't know.
Q. State's Exhibit 12-C is signed by M. May. Do you know who that is?
A. No.
Q. That was somebody in the Chicago office of not sufficient prominence that you would know who it is?
[fol. 591] A. I don't know who it is, I don't know of any such person.
Q. You knew all the officers of the company?
A. All the old ones.
Q. Located in the Chicago office?
A. No, I only knew the old timers. I wasn't in the office very often.
Q. You know who the president was?
A. I would say so.
Q. You know who the vice president was?
A. I would say so.
Q. You know who the secretary was?
A. Yes.
Q. You know who the treasurer was?
A. Yes.
Q. And the comptroller?
A. Yes.
Q. M. May isn't any one of those people?
A. No, it might be an assistant.
Q. And it isn't anybody you ever heard of as far as you now know?
A. No, I cannot remember.
Q. On State's Exhibit 12-D, that is also signed by M. May.
A. Maybe M. May took Dowd's place, but I don't know.
Q. State's Exhibit 12-C signed by M. May and State's Exhibit 12-D signed by M. May are not signed in the same handwriting are they?
A. One is in pencil and one is in ink.
Q. Which is in pencil?
A. Isn't this? No I guess it isn't. They look a little [fol. 592] different but I am no expert on handwriting.
Q. It doesn't look like the same handwriting?
A. It may be in a different handwriting. This is a little better handwriting I would say.
Q. What is the pencil notation on State's Exhibit 12-D?
A. That went to Agnes and that is Bosiger's initial. She

got the check and made the entry. I suppose that is what it means.

Q. Apparently it was in Mr. Bosiger's hands at one time?

A. If it came direct to me I would give it to Bosiger and have him take care of it.

Q. Was that your practice in reference to all letters of this character?

A. Maybe not all but most of them.

Q. And the practice was for Mr. Bosiger to hand them to whom?

A. The bookkeeper.

Q. Who is Agnes?

A. Agnes Johnson.

Q. And then he would give them to her?

A. No, not the letter but the check would be turned over to her. She was the bookkeeper and then he would hand it back to me.

Q. So all these letters containing notations of that character apparently passed through the hands of Mr. Bosiger, the office manager in the Minneapolis office before they were taken by you from the office?

A. Yes.

[fol. 593] Q. Do you know when these letters were taken by you from the office?

A. At the time I received them.

Q. Do you know if that was the general practice?

A. I imagine it would be the same as with the others. I usually always did it.

Q. Do you know or do you imagine it?

A. No, I imagine nothing. It was the usual practice for me to do that. I couldn't do anything else. I don't remember just when I put them in my pocket but I always put them there when I received them because I didn't leave the letters laying around.

Q. Why weren't these letters turned over to your successor when you left the National Tea Company?

A. For the same reason I didn't turn the others over. I didn't think anything about it. They served their purpose.

Mr. Doherty: Objected to as incompetent, irrelevant and immaterial.

The Court: They may be received on the same ground.

Q. Mr. Landin, referring to State's Exhibit 12, I find the statement "kindly find enclosed check for $144.37 rep-

resenting the allowance due your branch for purchases from the Fleischmann Company during the month of February." Will you explain what that was for?

A. A special allowance for quantity purchases made.

[fol. 594] Q. Did you customarily get allowances for quantity purchases from the Fleischmann Company?

A. Yes.

Q. You are now operating a small chain of grocery stores?

A. Yes.

Q. Are you able now to get corresponding allowances from the Fleischmann Company?

A. I cannot get any.

Q. Why not?

A. It wouldn't amount to enough, they wouldn't bother with it. It wouldn't amount to anything for me because of the amount I sell, it wouldn't be enough.

Q. And is it not true in the matter of purchasing yeast, a large chain grocery store has an advantage over a small chain or independent in quantity discounts?

A. Yes.

Q. Is that a considerable factor in the price of goods purchased from the Fleischmann Company?

A. It amounts to a lot.

Q. About what percentage would such an allowance amount to?

A. I cannot say in percentage because it don't show the quantity covered.

Q. But you know for what length of time?

A. It says a month.

Q. Would an allowance of $144.00 be a typical monthly allowance during this period of the company's business?

[fol. 595] A. It would vary one way or the other but usually somewhere near that.

Q. Showing you State's Exhibit 13, will you state what that is?

A. A letter from the National Tea of Chicago dated June 26th, 1931 addressed to myself.

Mr. Orfield: Offer in evidence State's Exhibit 13.

By Mr. Doherty:

Q. Did you notice the notation on this letter?

A. That is the same notation, it isn't his initial but the same writing.

Q. Do you think that is in Mr. Bosiger's writing?

A. I think so.

Q. It also reads Agnes for deposit?

A. Deposit or department?

Q. Would you say that letter was signed by the same person who signed State's Exhibit 12-B?

A. It is the same as this one here.

Q. Does that correspond with the signature on State's Exhibit 12-C or 12-D?

A. I would say it was the same as on State's Exhibit 12-C.

Q. Being the name of M. May?

A. Yes.

Mr. Doherty: The same objection.

The Court: The same ruling.

Q. Showing you State's Exhibit 13, this letter states as follows: "The enclosed check in the amount of $9.19 covers confidential allowance from Scott Paper Company." What was that for?

[fol. 596] A. A special allowance for quantity purchase.

Q. As an operator of a small chain can you now get the same allowance?

A. I don't think I handle Scott Paper but I haven't made any attempt to.

Q. Showing you State's Exhibit 14, will you state what it is?

A. It is a letter from the National Tea of Chicago dated June 12th, 1931, addressed to myself.

Q. What is State's Exhibit 14-A?

A. A letter from the National Tea of Chicago dated April 14th, 1931, addressed to myself.

Q. And what is State's Exhibit 14-B?

A. A letter from the National Tea dated May 22nd, 1931, addressed to myself.

Q. Were these letters sent to you in the usual course of your business as general manager of the National Tea?

A. Yes.

Q. And do they all pertain to the company's business?

A. Yes.

Mr. Orfield: Offer in evidence State's Exhibit 14, 14-A and B.

By Mr. Doherty:

Q. Mr. Landin, each of the exhibits 14, 14-A and 14-B contain a notation of the same character as those on the

previous exhibits. Can you tell in whose handwriting they are?

A. Mr. Bosiger's.

Q. Do you recognize them as being in Mr. Bosiger's handwriting?

[fol. 597] A. Yes.

Q. I notice State's Exhibit 14-A is not signed by anybody. Have you any way of telling what individual of the National Tea in the Chicago office sent that letter?

A. No, sir.

Q. Is there any different explanation as to these exhibits with respect to when they were taken from the National Tea office and retained by you and not turned over to the National Tea when you left their employ?

A. No, the same thing.

Mr. Doherty: Objected to as incompetent, irrelevant and immaterial, no foundation laid.

The Court: Received on the same theory.

Q. Mr. Landin, referring to State's Exhibit 14, I see the statement as follows: "We are enclosing two checks, one in the amount of $26.95 and the other in the amount of $240.00." Will you state what those checks were for?

A. The check for $26.95 covers a special allowance on quantity purchase over and above the jobber's discount. The only ones who can get it are the big buyers.

Mr. Doherty: I move the last part be stricken as not responsive.

The Court: It may be stricken.

Q. Are you now purchasing goods of the same character?

A. Yes.

Q. As the operator of a small chain, are you able to get corresponding discounts from the Wrigley Company?

[fol. 598] A. I don't get any.

Q. And what is the reason?

A. I don't buy in big enough quantities to make it worth while.

Q. Mr. Landin, I show you a letter marked State's Exhibit 15, and ask you what it is?

A. A letter from the National Tea of Chicago dated November 25th, 1929, addressed to myself.

Mr. Orfield: Offer in evidence State's Exhibit 15.

Mr. Doherty: The same objection.

The Court: The same ruling. It may be received.

Q. Mr. Landin, showing you State's Exhibit 15, I notice this statement: "Check of $17.25, from Hills Brothers Company, covers special allowance on purchases made from April 1st, 1929 to June 30th, 1929 inclusive." Will you state what that is?

A. It was a special allowance for quantity purchase.

Q. As the operator of a small chain do you now buy from Hills Brothers?

A. I buy Hills Brothers' merchandise but not from Hills Brothers.

Q. Are you able to get a corresponding discount as an operator of a small chain on Hills Brothers' merchandise?

A. No.

Q. It also refers to a check for $7.13. What was that for?

A. A special allowance on a quantity purchase.

[fol. 599] Q. As the operator of a small chain can you get a corresponding allowance from the Campfire Corporation?

A. No, I cannot buy from them. They don't sell to me. You have to buy it through the jobber, I haven't been able to do it.

Q. The same letter refers to a check for $15.75. What is that for?

A. That is a special allowance for a quantity purchase.

Q. Are you able to get a corresponding allowance now as operator of a small chain?

A. No.

Q. Why aren't you able to get such an allowance now?

A. I don't handle their merchandise.

Q. If you did handle it would you be able to get such an allowance?

A. No, I have to buy from the jobber and I couldn't get it.

Mr. Doherty: Do I understand this company sells just through jobbers?

A. I don't know who they sell to but not to independent stores.

Q. But they do sell to large chain stores?

A. Yes.

Q. Showing you State's Exhibit 16, what is that?

A. A letter from the National Tea dated November 25th, 1929, addressed to myself.

Mr. Orfield: Offer in evidence State's Exhibit 16.

[fol. 600] Mr. Doherty: The same objection.

The Court: It may be received on the same theory.

Q. Referring to State's Exhibit 16, will you state what the check for $65.69 therein referred to was for?

A. It was a special allowance on a quantity purchase

Q. As the operator of a small chain do you handle the goods covered by this exhibit?

A. No.

Q. But you know whether you could get a corresponding discount in purchasing in a small quantity from that company?

A. I am not positive whether or not they sell direct.

Q. If they do sell direct, would they give a quantity discount in small lots?

A. No.

Mr. Doherty: I move that be stricken for the purpose of making an objection.

The Court: It may be stricken.

Mr. Doherty: Objected to as calling for a conclusion of the witness.

The Court: Objection sustained.

Q. Mr. Landin, I show you State's Exhibit 17 and I will ask you what it is?

A. A letter from the National Tea of Chicago dated February 6th, 1931, addressed to myself.

Q. Was this letter received in the usual course of the company's business?

A. Yes.

[fol. 601] Q. And does it pertain to the company's business?

A. Yes.

Mr. Orfield: Offer in evidence State's Exhibit 17.

By Mr. Doherty:

Q. Mr. Landin, can you read the notation on the upper left hand corner of State's Exhibit 17?

A. "Is this for bulk or package. What basis, so I can check. B".

Q. A written inquiry on the exhibit from Mr. Bosiger?

A. Yes.

Q. And another notation on the other side, "recorded and deposited, 2-13-31, J. B." Is that Mr. Bosiger?

A. Yes.

Q. Do you know what is meant by recorded?

A. Recorded on the records.

Q. What?

A. This check.

Q. And the items covered?

A. No, we don't record anything on that, just the checks they record.

Q. Do you explain your possession of this exhibit on the same basis as the others of this character?

A. Yes.

Mr. Doherty: The same objection.

The Court: The same ruling, it may be received.

Q. Mr. Landin, showing you State's Exhibit 17, I call [fol. 602] your attention to an item reading, "$19.00—Fuji Trading Company, October, November and December." Will you state what that item was for?

A. That was a special allowance for the quantity purchase I bought during that period.

Q. Was it a quantity discount?

A. Yes.

Q. Showing you the items, "$8.55—Price Flavoring Extract Company, October, November and December." Will you state whether that was a quantity discount?

A. Yes.

Q. And showing you the remaining items on this exhibit, will you state whether they were quantity discounts?

A. Yes, they were.

Q. Are you able now as the operator of a small chain to get corresponding discounts from these companies?

A. No, I am not.

Mr. Doherty: Have you tried, Mr. Landin?

A. I have tried on some of them.

Mr. Doherty: Which ones have you tried on?

A. Washburn Crosby, Wheatena Company and Price Flavoring Extract Company. Fuji Trading Company's merchandise I don't handle.

Mr. Doherty: On the rest of them you haven't made any effort to get any discounts?

A. Those I have named I have tried.

Mr. Doherty: On the others you have not?

A. No.

[fol. 603] Q. Showing you State's Exhibit 18, I will ask you to state what it is?

A. A letter from the National Tea of Chicago dated February 2nd, 1931, addressed to myself.

Mr. Orfield: Offer in evidence State's Exhibit 18.

Mr. Doherty: The same objection.

The Court: It may be received on the same ground.

Q. Mr. Landin, referring to State's Exhibit 18, I see a notation, "$28.30 represents allowance on the Wrigley Company purchases for December." Was that an allowance on a quantity purchase?

A. Yes.

Q. As the operator of a small chain grocery can you get a corresponding discount?

A. No.

Q. I see an item of $50.85 representing Washburn Crosby Company, a cake flour allowance. Was that a discount on account of a quantity purchase?

A. Yes.

Q. Referring to an allowance of $253.05 by Kraft Cheese Company for October and November, will you state whether that allowance was a discount for a quantity purchase?

A. Yes.

Q. As the operator of a small chain are you able to get a corresponding allowance from Kraft Cheese Company?

A. No.

Q. Is that by reason of the fact you cannot purchase in sufficient amounts?

[fol. 604] A. Yes.

Q. I show you State's Exhibit 19 and ask you what that is?

A. It is a statement of purchases from the Puritan Malt Extract Division of the Pabst Corporation dated January 15th, 1931.

Q. Did that come from the National Tea?

A. Yes.

Q. It came to you in the usual course of your business?

A. Yes.

Q. And has to do with the business of the company?

A. Yes.

Mr. Orfield: Offer in evidence State's Exhibit 19.

By Mr. Doherty:

Q. Where did you say this came from?

A. From the Pabst Corporation. I have a note on the bottom there.

Q. It says Puritan Malt Extract Division of Pabst Corporation?

A. Yes.

Q. Where did the letter come from?

A. From the Puritan Malt Extract Division.

Q. It isn't signed by anybody?

A. No.

Q. It doesn't bear the name of that corporation except as you have written it on there?

A. Yes.

Q. Do you know whether it came by mail?

A. I couldn't say.

[fol. 605] Q. Do you know when it was received by you?

A. I couldn't say the date.

Q. Do you know when or who gave it to you?

A. No, it doesn't show on there.

Q. Do you know anything of the correctness of the statement except as you assume it to be correct?

A. I assume it to be correct.

Q. Have you any independent knowledge whether or not it is correct?

A. I cannot say, I wouldn't know. I don't know if I ever checked it.

Q. The only reason you have for saying it is correct is because you took the statement from the National Tea files?

A. I assumed it to be correct. They wouldn't send a statement showing I bought more or less.

Mr. Doherty: I move that be stricken as not responsive.

The Court: It may be stricken.

Q. You don't know who gave it to you, whether it came by mail or whether it was delivered in person?

A. I am not positive but I assume it came by mail.

Q. I am not interested in your assumption, just answer the question?

A. I am not sure.

Q. You don't know who made up the statement?

A. No.

Mr. Doherty: Objected to as incompetent, irrelevant and immaterial, without foundation.

[fol. 606] Q. Did you make that notation at the time the letter came in?

A. Yes, at that time, because there was no notation on there. I don't know how I got it but I wrote it down when I got it.

Q. If there had been errors in the statement would you have looked into it at the time?

Mr. Doherty: Objected to as calling for a conclusion, speculative.

The Court: He may tell what his best recollection is, not what he thought or what he might have done.

Q. Did you make it a practice to check the correctness of statements of this character?

A. Yes.

Q. Did you do that personally?

A. Quite a lot of them, the majority of them I would check with the buyer.

Q. Did you sometimes have assistance in checking the correctness of statements?

A. No, in cases like this where there is something involved, I would check it up with the buyer and talk to him and he would open up his books and say this is O. K.

Q. This statement came to you in the usual course of the company's business?

A. Yes.

Mr. Doherty: The witness already stated he didn't know how it came to him.

The Court: He may answer.

A. It came in the usual way.

Q. And it pertains to the company's business?

[fol. 607] A. Yes.

Mr. Doherty: You say this came in the usual way?

A. If I can answer it the way I want to, I could tell you how it could happen.

Mr. Doherty: We want to know how it did, not how it could happen.

A. I cannot say in this particular case.

Mr. Doherty: Then why did you say the usual way?

A. It might be both ways and they might be the usual ways.

Q. You said this came to you in the usual way?

A. Sometimes it would be handed to me and sometimes by mail. It might be in the warehouse or on the loading platform.

Mr. Doherty: But at this time you haven't any recollection how this particular document came into your possession?

A. No, I have not.

Q. Would any of those various ways which you have referred to be in the usual course of the company's business?

Mr. Doherty: That is objected to, the witness doesn't whether it was the usual way.

A. Yes, one of the ways.

Mr. Doherty: I move that be stricken as not responsive.

The Court: It may be stricken.

The Court: What is the purpose of this?

A. The same as the rest of them.

The Court: What was done with it after it came to you?

[fol. 608] A. Just the same as the others.

The Court: What was done with the figures?

A. I would check it with the buyer to see if was correct, to see if there was any discrepancy in it.

The Court: It was part of your duty to do it?

A. Yes.

Mr. Doherty: Do you know whether in this case you did?

A. I cannot say whether or not I did but it was the usual practice.

Mr. Doherty: I want to know if you did or not?

A. Yes, I would say so.

Q. I want to know if you know whether you did or did not check that with anything. Answer yes or no.

A. I don't know, I cannot swear to something I don't know.

Q. Nobody is asking you to swear to anything except what you do know.

A. But the way you put the question, it is a little difficult.

The Court: Cannot he explain what part this takes in his business or the necessity of it?

Q. Will you explain in what way this statement is connected with the business of the National Tea?

A. This is a complete statement from this firm showing purchases in 1930 as against 1929.

Mr. Doherty: Just a minute. It is objected to as immaterial.

Q. Just state how this statement was connected with the business of the company?

[fol. 609] A. It was received by me from the corporation and they are giving me a comparison of our purchases for 1929 as compared with 1930, showing there was a large increase.

Q. Does it state anything with reference to rebates?

A. Yes, it tells us how much per case we were receiving in each year.

Q. Does it give information as to the amount of purchases from this company in a given year?

A. Yes, the amounts in cases and the amount of discount.
Q. Does it give information as to the rebates?
A. Yes.

Mr. Orfield: I will renew the offer of the exhibit.
The Court: Is that a record of the National Tea?

A. No, that is a record,—of course this was on the purchase books but this was made up by the corporation and delivered to me in one way or the other.
Q. As a representative of the National Tea?
A. Yes.
Q. In the usual course of the business of the National Tea?
A. Yes.
Q. And having to do with the business of the National Tea?
A. Yes.
Mr. Doherty: Objected to as incompetent, irrelevant and immaterial, without foundation.
[fol. 610] The Court: I am inclined to think it may be received.
Q. Mr. Landin, referring to State's Exhibit 19, I find an item reading, "rebate—six per cent, $169.93." From whom was that received?
A. From the Puritan Malt Extract Company Division of Pabst Corporation.
Q. That rebate covers how long a period?
A. For the year 1929.
Q. Referring to another item, "rebate—six per cent, $201.00". Was that a quantity rebate?
A. Yes.
Q. For how long a period?
A. For 1930.
Q. For all of the purchases of the year 1930?
A. Yes.
Q. Do you now purchase goods covered by this statement?
A. No, there isn't much sale of malt extract today.
Q. As the operator of a small chain do you know if you could get corresponding discounts from the Puritan Malt Extract Division of Pabst Corporation for purchase in small quantities?
A. No. I could not.

Q. Mr. Landin, does the practice of allowing quantity rebates in the purchase of groceries by a large chain store extend to a considerable portion of the goods sold by such chain?

A. Yes.

Q. Does it extend to as much as half of the total volume of the goods sold by such chain?

[fol. 611] A. Everything but fruit and vegetables you consider groceries.

Q. Let the question apply to all goods sold by the National Tea Company. Did the practice of allowing quantity rebates extend to as much as half of the total volume of goods sold by the National Tea of Delaware?

A. Yes, I think it would in volume, I think it would.

Q. In cost I mean?

A. Yes.

Q. Would it be approximately half or more than half?

A. It would be about fifty per cent, I think.

Mr. Doherty: Counsel has consented that I may ask the witness a few questions on one point covered by his testimony before adjournment.

Mr. Orfield: These special rebates which we have just been considering, these confidential rebates, were they in addition to the usual cash discounts and the usual quantity discounts given to the trade generally?

A. Yes.

Q. They were an additional discount?

A. Yes.

Mr. Orfield: You may examine.

By Mr. Doherty:

Q. Mr. Landin, you testified yesterday that you had some understanding with the newspapers of the Twin Cities regarding the suppressing of news concerning chain stores?

A. Yes.

[fol. 612] Q. With what newspapers and what representatives of the newspapers did you have such understanding?

A. With all of them.

Q. Will you name them?

A. With the solicitors who called on me for my advertising.

Q. Name them and tell us what representative in each case?

A. I don't know their names now, I cannot remember them for the last three years.

Q. When were these understandings had?

A. Off and on for many years.

Q. When were the last ones had?

A. That would come up almost any time we talked to them.

Q. Just answer the question, please. When according to your recollection did you have the last of any such talks?

A. It was before 1933, in the years before that.

Q. Who was the man you last talked with?

A. I cannot remember the name.

Q. Can you remember the name of anybody you ever talked to representing any newspaper?

A. If the solicitors are still there I can get their names.

Q. Can you remember the name of any of them that you talked to?

A. I think one man's name was Vincent of the Minneapolis Journal.

Q. What was Vincent's position with the Minneapolis Journal?

[fol. 613] A. He was in the advertising department and called on me, that's all I know.

Q. Can you give me anybody else?

A. There is a fellow named Gunderson, I think he was with the Star.

Q. And who else?

A. I cannot remember the Tribune fellow's name.

Q. What was his position?

A. Advertising and he called on me.

Q. Was he the head of the advertising department?

A. I wouldn't say he was the head, but he called on me.

Q. Did you testify you had these talks with the heads of the advertising departments of the newspapers?

A. I don't know whether or not they were heads.

Q. I am asking you if you testified to that effect yesterday?

A. I talked to Kingsley Murphy about it.

Q. Cannot you understand English?

A. Not very well.

Q. You testified on this subject yesterday?

A. I might have.

Q. Don't you know?

A. Look it up. I think there was something said about it.

Q. Didn't you testify yesterday you had some talk with the manager of the advertising department of each newspaper?

[fol. 614] The Court: Answer yes or no.

A. I think I did testify that I talked to some.

Q. That you talked to some of the managers of the advertising departments?

A. Yes.

Q. Who did you refer to?

A. One familiar name was Williams.

Q. What paper was he with?

A. I think he was with the Journal, but he is gone now.

Q. Do you know where he is now?

A. He is with some paper in the East, I don't know just where he is now.

Q. Can you give anybody else?

A. No, I cannot name anybody else, I couldn't say directly.

Q. Can you say you did talk with anybody else than those you have mentioned?

A. I talked quite a little with the different ones but I don't know just who they were, but different ones in the advertising departments.

Q. You have named everybody you can name?

A. All I can give by name.

Q. Can you designate anybody else by position?

A. I think Williams was the head of the advertising department.

Q. Can you designate the position of the men you talked with?

A. The majority were in the department, solicitors in that department, in the advertising department.

[fol. 615] Q. Of what newspapers?

A. The Tribune and Journal and Gunderson was the man from the Star. He is the only man I know in the Star but I know a lot of them in the Tribune and Journal.

Q. The papers you refer to are the Tribune, Journal and Star?

A. Yes.

Q. And Gunderson is the man you talked to from the Star?

A. Yes.

Q. And with the Journal you talked to Vincent?

A. Yes.

Q. And with the Tribune you talked with whom?

A. Williams was the advertising man but there is another solicitor I talked to but I don't know his name.

Q. Can you think of any other name? Can you think of anybody in the Tribune you talked with either by name or designate his position?

A. No, I cannot just say now.

Q. What talk did you have with Vincent?

A. Just in a general way, on the chain store propaganda, to keep it out of the paper during the time the propaganda was on.

Q. What did he say?

A. That he would certainly see that nothing got in there, that he would watch out for that.

Q. In general that nothing unfavorable to the chains would get into the Journal?

[fol. 616] A. Nothing that they could possibly stop, they wouldn't let anything get in they could hold out.

Q. Did he tell you what they could possibly stop?

A. There was so much of that stuff going on in those years that we were after them continually to have that stuff suppressed as much as they could.

Q. What did the solicitor for the Tribune say?

A. They would all say the same thing. If you get the papers you can see there isn't much in them.

Q. Were they talking about soliciting local news or United Press news?

A. Local news more than anything else.

Q. Was there anything said about suppressing Associated or United Press news?

A. No, there was nothing said except chain store propaganda. We had so much of it for a few years there.

Q. Now I understand you have given to me and identified by position everybody you can recall whose name or position you can recall ever talked with on this subject representing any of the newspapers you referred to in your testimony?

A. There might have been others, but I don't remember.

Q. But have you told me all you can now recall?

A. That's all I can remember right now.

Mr. Doherty: I think that is all.

Adjourn until 10:00 A. M. Friday.

[fol. 617] By Mr. Orfield:

Q. Mr. Landin, I now show you State's Exhibit 20 and ask you to state what it is?

A. It is a letter from the National Tea of Chicago dated July 9th, 1924, addressed to me.

Mr. Orfield: Offer in evidence State's Exhibit 20.

Q. Was this received in the usual course of the business of the National Tea?

A. Yes.

Q. Was it a part of the records of the company?

A. Yes.

Mr. Doherty: Objected to as wholly immaterial, without foundation and irrelevant.

The Court: It may be received for what it is worth.

Q. Now showing you State's Exhibit 21, I ask you to state what that is?

A. That is a letter gotten up during January 19th, 1933 or around that time as general manager and vice president of the National Tea.

Q. As general manager and vice president was it the policy of your company to prevent legislation unfavorable to your company?

Mr. Doherty: Objected to as without foundation, speculative, calling for a conclusion of the witness and immaterial.

The Court: Find out whether or not he knows.

Q. As manager of the National Tea do you know whether it was the policy of the company to use their influence in connection with legislation affecting the company?

[fol. 618] A. Yes.

Q. And was it the policy of the company to use their influence in this way?

Mr. Doherty: Objected to as immaterial, anybody would attempt to use their influence against unfavorable legislation.

Q. Did you personally as representative of the National Tea take any hand in connection with the legislation affecting the National Tea?

A. Yes.

Q. What action did you take?

A. We put out a lot of letters to different employees, landlords and customers of our store.

Q. For what purpose?

A. To have them write to their senators and representatives asking them to vote against any of the bills which would be adverse to the chain store tax.

Mr. Doherty: I move that be stricken as wholly immaterial.

The Court: Denied.

Q. When did you take a part in trying to prevent chain store legislation?

A. Two years, 1930 and part of 1931.

Q. Does the legislature meet in January?

A. We had our meetings in 1930 and 1931.

Q. Before the Legislature met?

A. Some of them.

Q. Who was invited to the meetings?

A. The heads of all the various chain stores.

Q. In the state?

A. No, in the city. The only meetings I attended were in the city.

[fol. 619] Q. Minneapolis and St. Paul?

A. Yes.

Q. What success did you have in preventing chain store legislation in 1931?

Mr. Doherty: Objected to as incompetent, calling for a conclusion of the witness, speculative, without foundation.

The Court: Objection sustained.

Q. Was there any chain store legislation passed by the 1931 Legislature?

A. No.

Q. Was there an effort made to pass chain store legislation?

Mr. Doherty: Objected to as indefinite, and immaterial.

The Court: I think it is indefinite.

Q. You have stated that there was no chain store legislation passed by the 1931 Legislature?

A. Yes.

Q. Were the efforts of the chain stores in trying to prevent it a factor in preventing the passing of that legislation?

Mr. Doherty: Objected to as calling for a conclusion, no foundation laid, speculative.

The Court: Sustained.

Q. I now show you State's Exhibit 21 and ask you to state what it is?

A. This letter is a copy of a letter of January the 19th, 1933, directed to John Doe, representative. It was to be filled in with the different names.

Q. And were letters identical with this used by you in [fol. 620] the course of the business of the National Tea?

A. Yes.

Mr. Doherty: I move that the answer be stricken for the purpose of making an objection.

The Court: It may be stricken.

Mr. Orfield: Offer in evidence State's Exhibit 21.

By Mr. Doherty:

Q. Did you say you prepared this form of letter?

A. Maybe not that particular one but I had copies of it.

Q. Did you prepare the original form from which this was taken?

A. Yes.

Mr. Doherty: Objected to as immaterial, not the best evidence.

The Court: I don't think your foundation is sufficient to show the purpose of the letter, what it was to be used for and by whom.

By Mr. Orfield:

Q. With reference to State's Exhibit 21, will you state to whom you sent letters of this character?

A. I cannot say just who I sent copies to. We sent several letters, some to landlords, some to managers and some to managers to have their customers copy in their own handwriting. All the chains made up different letters.

Mr. Doherty: I move the latter part of the answer be stricken as a conclusion of the witness.

[fol. 621] The Court: It may be stricken.

(Question read.)

A. This was made out to have the managers turn over a copy of it to the customers who would write to their representatives or senators. Letters of this kind would be sent to store managers.

Q. In order that they might turn them over to the customers?

A. Yes, so they might copy them in their own way and in their own handwriting.

Q. Who were they expected to write the letters to?

Mr. Doherty: Objected to as immaterial.

The Court: Let him explain.

A. We would write a special letter to the store manager and send him a copy of it and tell him what he should do and that they should substitute their own senators or representatives and mail the letters to the Capitol in St. Paul.

Q. Who should do it?

A. The customers, whoever they could get to do it.

Mr. Orfield: Offer in evidence State's Exhibit 21.

Mr. Doherty: Objected to as irrelevant, immaterial, without foundation.

Q. Have you any information as to whether letters of this kind distributed to your customers were in fact mailed to such senators?

A. Absolutely, it was a strict rule, they had to do it.

Mr. Doherty: I move that be stricken as not responsive.

[fol. 622] The Court: It may be stricken.

Q. The question is whether the customers then wrote letters to their respective senators and representatives?

A. Yes, they did.

By Mr. Doherty:

Q. How do you know that?

A. I talked to a lot of people and some of the senators who received them, there were thousands received at the Capitol.

Q. Did you count them?

A. No, but thousands came in.

Q. From the National Tea?

A. No, but all the chains did that.

Mr. Doherty: I move that be stricken as not responsive.

The Court: It may be stricken.

Q. We were talking about letters from the National Tea?

A. I know from my own managers. I talked to them personally and they told me their customers sent the let-

ters in. They even wrote me and told me they sent them in, I know they were sent in.

Q. For the reasons you have given, that is the extent of your knowledge?

A. Yes.

Mr. Orfield: Did you see any of the letters sent in in this way after they were sent in?

A. After the representative received it?

Q. Yes.

A. No, but I mailed many to many senators myself.

[fol. 623] Q. Did you in the course of your business ask for any reports from your store managers as to how this legislation was succeeding?

A. Yes, managers would write me and tell me about it.

Q. In the usual course of the business of your company did you receive information from your managers as to whether this campaign was succeeding?

A. I had some letters.

Q. You had such reports from your store managers?

A. Yes.

Q. In the usual course of the company's business?

A. Yes.

Mr. Orfield: Renew the offer of Exhibit 21.

Mr. Doherty: My understanding of the testimony last given is that Mr. Landin had received reports from his managers in regard to the matter.

Q. Did you in the course of the company's business receive any definite reports from any of your store managers as to whether their customers had written letters like the one offered in evidence?

A. Yes.

Q. And what was that report?

Mr. Doherty: Objected to as not the best evidence.

Q. Were these reports in writing or verbal?

A. They were both in writing and verbal.

Mr. Doherty: Objected to as hearsay and if in writing, not the best evidence.

[fol. 624] The Court: The Court believes this exhibit is admissible. It may be received along the line of showing the method of doing business, for what it is worth.

Mr. Orfield: That is all.

Cross-examination.

By Mr. Doherty:

Q. State's Exhibit 21 was prepared by you?

A. Yes.

Q. And sent to your store managers with instructions they try to get their customers to send letters in this form to the state legislators?

A. Not only customers but themselves and I took care of the landlords myself. I mailed them to all landlords myself.

Q. And asked them to sign them and send them in to the legislators?

A. This letter or similar letters.

Q. Did you believe the things you put in this letter and sent to the legislators?

A. I fought for it 100 per cent.

(Question read.)

A. Yes.

Q. You were acting honestly when you wrote this letter and thought you were presenting to the legislators legitimate reasons why they should vote against the law?

A. It might be yes or no on that.

Q. Which is it?

A. I cannot say I believed the whole theory but I was with the chains for so many years.

[fol. 625] Mr. Doherty: I move that be stricken as not responsive.

(Question read.)

A. Yes.

Q. You thought everything you put in this letter was a fair statement of the fact as far as it stated any fact?

A. Yes.

Q. And that everything in there was a fair argument against the enactment of the chain store tax law?

A. In that regard I think it was.

Q. You didn't think you were doing anything unethical or unfair when you were trying to convince the legislators that this law was not a fair law?

A. I don't know anything about unethical, but I don't think it was unfair.

Q. Is it not a fact, Mr. Landin, that the independent store keepers and the associations were taking a part in this effort to convince the legislators to pass the law as strong as you were taking to try to convince the legislators that it should not be passed?

A. I imagine they were but I don't know how strong an effort.

Q. They were very active in promoting passage of the law?

A. They were acting in their small way, I imagine.

Q. It is not what you imagine?

A. In my opinion.

[fol. 626] They were very active, weren't they?

A. I don't know just how active, I don't know to what extent.

Q. As far as you could see were not the independent store owners and their associations, the strongest force back of the promotion of this law?

A. I think they were, but I don't know.

Q. And they had their representatives up in the legislature?

A. I think they did.

Q. And appeared before the committees of the legislature who were considering the matter?

A. Yes.

Q. And argued their side of the case?

A. Yes.

Q. On the same basis presenting the other side that you were trying to present in these letters?

A. I suppose so.

Q. Do you know whether the independents, the associations or independent store owners were trying to prevail on people to write to legislators in support of this law?

A. That I don't know.

Q. You would naturally expect that is what they would do?

A. I should think they would.

Q. If they knew their business as well as you did they would?

A. I should think so.

Q. The independents were trying to promote passage of the law?

A. Yes.

[fol. 627] Q. You testified you were in the employ of the National Tea for about 25 years prior to March, 1933?

A. Yes, just about.

Q. At what age did you enter the employ of the National Tea?

A. I think I was of legal age but I would have to figure that out. I think I was about 26 or 27.

Q. Making you 52 now?

A. 53.

Q. Was that the first business experience you had?

A. No, I had a store of my own before I went with the National Tea, a grocery and meat market.

Q. How long had you been running that?

A. Somewhere around two years.

Q. You started that when you were about 25?

A. Just about.

Q. And you ran that about two years?

A. A year and a half or two years.

Q. An that was your first business experience?

A. No, I was in business when I was 17 or 18. I had a small candy store business of my own and then my father moved to Chicago and started a store in Chicago in 1898 and I worked there.

Q. In what business?

A. Grocery. That was in 1898 and then I worked in the Fair Department Store in Chicago for about a year, then I bought grain.

Q. You bought grain?

A. Yes, I was a grain broker for about two years in the Dakotas when I was 21 or 22.

[fol. 628] Q. Except for those short intervals in your early life you have spent your entire life in the grocery business?

A. Yes.

Q. You testified here about various comparisons between chain and independent stores and volunteer stores in regard to advantages. I suppose in your testimony you were referring to the grocery business?

A. That's all I know anything about.

Q. You are not presuming to give us any opinions about any other lines of business?

A. No.

Q. So we can understand when you were testifying about large and small chains you were referring to chains in the grocery line only?

A. Yes.

Q. When you came to Minnesota to take charge of the National Tea, by whom was the company owned at that time?

A. The capital stock of the Delaware Corporation. When I came up we took over the McBride Stores.

Q. Who was the owner when you first came or did you start it?

A. We bought out a small chain of 12 or 13 stores, the H. P. McBride Stores in Minneapolis.

Q. Were they bought before or after you came up?

A. We bought them and then I came up here.

Q. Who owned the National Tea at that time?

A. I was interested in it after I got here but I think Guy [fol. 629] Thomas and George Rasmussen were the owners. George Rasmussen was the president at that time.

Q. You are referring to Guy Thomas of Minneapolis?

A. Yes.

Q. He owned fifty per cent interest?

A. I cannot say just at first but when we promoted this company George Rasmussen owned three-sevenths and I owned one-seventh and Guy Thomas owned three-sevenths at that time after we came up and then Rasmussen and Thomas put up some money to buy out the McBride stores.

Q. At the beginning Rasmussen was a minority owner, I mean he owned a little less than half the stock?

A. The same as Thomas was at that time. There was no stock at that time.

Q. When was the corporation formed?

A. I think it was in 1921 when I came into the picture when we took over the Home Economy Stores in 1920 or 1921.

Q. Is that as early as you recall a corporate business?

A. I couldn't say for sure whether there was any stock issued to the two parties or not. They had $25,000 a piece in the business at that time.

Q. When you acquired the Home Economy Stores in 1920 or 1921, the business was run by the corporation at that time?

A. I think it was.

Q. Was it called the National Tea?

[fol. 630] A. Yes, we called it the National Tea right from the beginning.

Q. Was that the time when you had one-seventh and Mr. Thomas and Mr. Rasmussen had three-sevenths?

A. I got mine in 1920 or 1921.

Q. And the stock was held one-seventh, three-sevenths and three sevenths?

A. Yes, because there was $30,000 put in by Rasmussen and $30,000 by Thomas and I had $10,000. I think our original corporation was $100,000 Preferred and with the one hundred shares of Preferred I had I got two hundred shares of Common.

Q. You had one-third of the voting stock at that time?

A. That was issued at that time.

Q. How long did the ownership continue in that way, divided between the three of you in those proportions?

A. Something like a year or so, maybe a little less.

Q. Then what change was made?

A. Then the stock was taken back.

Q. How was it transferred if there was any change?

A. Then it was taken back by the Chicago Company, they wrote and wanted my stock back.

Q. Did they have it before?

A. They got it back and paid me for it, I didn't sell it.

Q. It was taken back and paid for?

[fol. 631] A. Yes.

Q. When was that?

A. 1921 I think.

Q. Did Guy Thomas sell his stock also at that time?

A. He made me understand he did.

Q. That he sold his stock, too?

A. Yes.

Q. And from that time the National Tea Company was the owner of all the stock?

A. Yes, just for a few months.

Q. Then what became of it?

A. Then Guy Thomas and the National Tea had 50-50.

Q. And it went along on the 50-50 basis for how long?

A. I don't know, then it was all taken over by the Chicago Company and they formed a real estate company and Guy Thomas took an interest in the real estate company.

Q. I don't care about that. When did Guy Thomas part with his stock in the grocery company operating in Minnesota?

A. I don't just remember the year, I think it was around 1928 or 1929.

Q. And that was the first time the National Tea of Illinois became the owner of the majority of the stock?

A. Yes, then they became the owners of all of it.

Q. But up to that time they only owned fifty per cent?

[fol. 632] A. Yes.

Q. From that time on how were the stores built up, by purchasing other chains or by adding store by store?

A. In both ways.

Q. What other group of stores were purchased?

A. Then we took over the Piggly Wiggly in July, 1927, I think.

Q. How many?

A. I think there were somewhere around 50 stores and then in November, 1927 we took over the Consumers Wholesale Supply. They had some 100 to 130 stores.

Q. So at the time you left there was altogether in operation 215 stores?

A. Thereabouts.

Q. After you left the National Tea, after being on its payroll for 25 years, you went into business for yourself?

A. Yes.

Q. On the savings accumulated, I assume, from your earnings with the National Tea?

A. I imagine so, some of it.

Q. What do you mean?

A. I had other ways of making profit, I had some real estate.

Q. Real estate acquired by your earnings and savings with the National Tea?

A. Yes.

Q. Were you operating any business at the time you left the National Tea?

[fol. 633] A. I wasn't operating any but was interested, I had stock in different ones.

Q. Did you have any stores in Minneapolis?

A. I had stock in them.

Q. How many stores were involved?

A. I guess there was four at least. Guy Thomas was interested in the meat markets all the time and there were

several others. It was a stock company and we all had stock in them.

Q. Then what was the extent of your interest?

A. I don't know, one-third or something like that.

Q. You had one-third interest in all the stores?

A. I imagine so.

Q. When you first operated in Minnesota, the business of the National Tea was confined to St. Paul and Minneapolis?

A. Just Minneapolis when it started.

Q. And later St. Paul stores were acquired?

A. Yes.

Q. When did you first branch out into the country?

A. We had a few in 1925 or 1926. The Consumers Wholesale Supply Stores were nearly all in the country and I think we had a few before we took them over.

Q. And when did you take them over?

A. In November, 1927.

Q. That was the first time you had any consequential country stores?

A. Yes.

Q. When you left the National Tea you opened three stores of your own?

[fol. 634] A. I opened two.

Q. Immediately?

A. No, one in April or May and one in August.

Q. When was the other opened?

A. Then I opened one last Summer, but closed it after it was opened for about three or four months.

Q. Were you vice president of the company all the time you were in their employ?

A. No.

Q. Up to what time?

A. I think I became vice president when I got that stock in 1923.

Q. How long did you continue to be vice president?

A. Until I left the company in 1933.

Q. During the time you were general manager and later vice president, you had quite complete control of the management and affairs of the Minnesota company?

A. Quite so, except the last year or two.

Q. In other words the Illinois company and Mr. Thomas

looked to you for the results and left to you the necessary methods of management and the means of securing results?

A. That is right.

Q. In using the term "chain stores" throughout your testimony what do you mean?

A. Anything I would call a chain, I would mean a corporation owned chain was a real chain.

Q. If it was independently owned you would not say it was a real chain?

[fol. 635] A. According to the law it is now.

Q. But if an independent owned the same number of stores as a corporation that would be just as real a chain as the corporation chain?

A. I imagine it would.

Q. How have you used the term generally throughout your testimony when referring to chain stores?

A. I just called them large or small chains.

Q. What do you mean by chains. In what sense have you used the word chains?

A. I don't know that I would use it any other way, the A&P and National Tea I would call regular corporate chains.

Q. What do you mean by regular corporate chains disassociated from any other descriptive word?

A. I always called it a chain when it was owned by a stock company.

Q. Is that all you have meant by chain in your testimony?

A. I don't know, if I mentioned it except when I was asked if it was a large or small chain.

Q. Under the Minnesota Law it is defined any person or corporation or partnership having two or more stores. Is that what you mean by chain?

A. We would have to mean that.

Q. I want to know what you mean in your testimony?

A. I would say if there was two or more stores it would be a chain. I would have to say it was a chain.

[fol. 636] Mr. Doherty: I move that to be stricken.

The Court: It may be stricken.

A. I would say yes.

Q. There has been constant use of the term large chains and comparison is made between large chains and small chains and independents?

A. Yes.

Q. What do you mean by a large chain?

A. Anyone who has two or three hundred, one thousand or fifteen hundred stores.

Q. What is it, two or three hundred or one thousand or fifteen hundred?

A. It is not what I mean. Anything having one hundred or more would be a large chain.

Q. Then you have been referring to a large chain as having one hundred or more stores?

A. I would say Thomas has a chain of 30 stores and he is as bad off as anybody.

Q. Will you please try to follow the questions and answer them?

A. Then I would say if you have 25 stores it is a large chain.

Q. Are you sure you wouldn't want to go down any lower?

A. No, a chain of less than 25 stores don't amount to an awful lot.

Q. I want to understand what you mean in your testimony by referring to large chains. Whenever you testified to a large chain you mean a chain of 25 or 30 stores?

A. Yes, I would say so.

Q. Is that regardless of the size of the stores?

[fol. 637] A. Yes.

Q. So we can take that as your understanding, that a large chain is 25 or more stores?

A. Yes, I would say 25 is a good chain.

Q. The first thing you testified to as being an advantage of the large chains is the method of advance booking for merchandise to be purchased. As I understand what you mean by a booking is where a merchant orders from a manufacturer or somebody else, for some period in advance of the time the stock is needed, an order for a specific amount of goods and the manufacturer would bargain or agree to deliver at the time needed, the stock at a price based on the price given when the order was given. Is that substantially it?

A. Yes.

Q. I also understood you to say bookings can be made in any quantity?

A. That booking is just a small part of that buying.

Mr. Doherty: I move the answer be stricken as not responsive.

The Court: Stricken.

Q. It is correct to say bookings can be made in large or small quantities?

A. It would be in a car load or more.

Q. Do you mean to say a merchant cannot book in the chains you were speaking of, making purchases today for delivery 30 days from now, in less than car load lots?

A. Merchants don't usually book.

Q. I don't care what merchants do, answer the question.

[fol. 638] A. I know he cannot, I don't know if he can.

Q. You mean you cannot give a jobber an order for delivery 30 days from now on the present day price?

A. No.

Q. Do jobbers usually book or only manufacturers?

A. Yes, they book but they get that booking themselves.

Mr. Doherty: I move the answer by stricken as not reponsive.

The Court: It may be stricken.

Q. Is it true that jobbers and wholesalers also book?

A. I think they do, some items.

Q. And don't they book in smaller than car load quantities?

A. I don't think so.

Q. Of course when a chain or merchant or anybody else today buys in advance on the present day price, he obtains an advantage by reason of that purchase if the price goes up between the time of the purchase and the time of delivery. Isn't that right?

A. Yes, they do.

Q. And if the price instead of going up before the time of delivery goes down then there is a loss to the purchaser?

A. Not on all items.

Q. If you contract for sugar you have 30 to 45 days to draw it out and if it goes down before you receive it you get the advantage if it drops?

[fol. 639] A. And if it goes up you still get your advantage.

Q. Do you mean a sugar producer will take a chance both ways?

A. Yes.

Q. Is that the booking we have been talking about?

A. That is the only booking I have been talking about, not small items, just flour and sugar, but flour is booked the other way. If you book flour at a certain price it is yours regardless of whether the price goes up or down.

Q. What other items are booked on that basis?

A. Sometimes you buy peaches F. O. B. the coast or F. O. B. Minneapolis, but that is not done so much.

Q. Isn't most of the booking done on the basis that the buyer binds himself to take at the time of delivery the prevailing price at the time the order was given?

A. Yes.

Q. So between two classes of people who would have the advantage or disadvantage of bookings would depend on who was the best judge of whether the price was going up or down?

A. The advantage would lie with whoever had the best judgment.

Q. If it was a matter of judgment or a matter of guess whether prices were going up or down?

A. It depends on who is going to get the advantage, chains or volunteers or independents.

Q. I don't care who it is?

[fol. 640] A. Yes, there would be an advantage.

(Question read.) It would have something to do with that.

Q. Wouldn't it have everything to do with it?

A. Yes.

Q. You make the point in that connection as I understand you, that you think companies like the National Tea have the advantage because they have men who make more of a study of market conditions?

A. Yes.

Q. What is the fact with reference to who does the buying for the National Tea of Illinois, if you know?

A. The man who did do the flour and sugar bookings.

Q. Do you know how many buyers they have altogether?

A. They have several but I know just one man took care of the flour and sugar, but he is dead now.

Q. In other words, they have several buyers in several different departments?

A. Yes, they have several buyers.

Q. And on this question of booking in advance on the chance the market is going up, it is simply the judgment of one of those buyers who happens to be in the field in which the booking is made?

A. Yes, he reads trade journals and gets tips from the

refiners. They go around and tell you they are going to have an advance and book you up. Even the flour mills will do that and if you book up, you will have to book up [fol. 641] the entire amount so you won't get stuck.

Q. Anybody can read trade journals?

A. The independent competitor don't read much.

Q. He could read them if he wanted to?

A. Yes.

Q. They are available to anybody who wants to read them?

A. I think so.

Q. The large independent jobber of course has access to all the information that the National Tea has as to future market conditions?

A. I think they have.

Q. The volunteer chain organizations have access to all the same information?

A. They have if they want to use it.

Q. So as between the volunteer chains and the jobbers on the one hand and the National Tea on the other, there is no advantage in favor of the National Tea?

A. There is a difference if you figure in jobbing houses or stores.

Q. Let-s take one thing at a time. Has the National Tea any advantage over the wholesaler or jobber in their bookings?

A. No, I don't think they would have any advantage.

Q. Then take the volunteer chains where we have the retailer owned wholesaler type. Would the National Tea have any advantage over such an organization with refer- [fol. 642] ence to information or access to material from which to study market conditions?

A. I think they would.

Q. Why?

A. The chains carry a lot of buyers and they consult all the statistics that the small jobber doesn't have.

Q. We are not talking about small jobbers.

A. The jobber who handles the small store, volunteer or any of them, I would say they are all in the same class.

Q. We have testimony that one of these volunteer chains has three or four hundred stores in Minnesota. Assuming that to be the fact, would you say the National Tea would have any advantage over that organization in the matter of future bookings?

A. Not over the jobbing houses.

Q. I am talking about the retailer owned wholesaler such as these volunteers have?

A. Not as far as the wholesale end of it.

Q. If the wholesaler is owned by the retailer, the retailer gets all the advantage, nobody else does?

A. I don't know how they handle that.

Q. Did you hear the testimony of the men who testified here how they handled the volunteer chains?

A. No, I didn't even know there was a trial going on.

Q. Let's assume the volunteer plan of operation, the retailers owned wholesaler operations and we have a large [fol. 643] number of retail stores. Then would you say the National Tea had any advantage over that type of organization in the matter of booking?

A. In different ways. If the National Tea books up too much stuff, they can sell it out at a price but if a group store buys it they cannot turn it out. It isn't their stores, they might be hooked one way or the other.

Q. If the wholesale house was operated by the retailers, they would have the same advantage as the retailers if they acted sensibly?

A. I don't know how they operate, with that class there might not be so much difference.

Q. You used the term buying organization. As a matter of fact all they have is this group of buyers who represent the buying of a certain department of the company's business?

A. Yes.

Q. And these men make such study as they can?

A. They get to be experts because they have only a few items.

Q. That is all there is to distinguish these buyers from anybody else, the fact each one has to buy for a department?

A. Yes, then there is an advantage when they buy just a certain item.

Q. I didn't ask about that, I asked what the fact is?

A. I don't know.

Q. On the question of quantity buying, as I get the drift [fol. 644] of your testimony and the other witnesses' testimony, there are three different things to be discussed. First you have the ordinary cash discount which anybody can get regardless of quantity?

A. Yes.

Q. And then you have volume discount which depends on the volume, namely on whether it is a car load lot?

A. Called the regular jobbing discount.

Q. That is merely a car load proposition?

A. No, it doesn't have to be, just so they can buy as a jobber. Some chains can buy 25 cases.

Q. Then you get the full car load discount on less than a car load?

A. And there might be a little more on the car load but they can get the same discount on 25 or 30 cases.

Q. I am talking about ordinary trade discount?

A. So many manufacturers won't sell only to jobbers and then they get the jobbers' discount. There are some things I couldn't buy if I bought a car load.

Q. I am talking about things open to purchase?

A. Yes.

Q. As to anything any particular buyer may purchase, the trade discount ordinarily follows any car load purchase or more?

A. Yes.

Q. And in some cases it may be had on less than car load lots?

A. Yes.

[fol. 645] Q. And the same trade discount may be had, I take it, by a group of independents, or companies of stores that pool their requirements to buy in carload lots?

A. On some items.

Q. I mean on items which carry a trade discount in the carload amounts?

A. Yes, I think that they can if they can buy it.

Q. I am talking about things open to purchase without being limited to any special class. Now this special discount above the ordinary cash and trade discounts are ordinarily a matter of negotiation between a store owner or company and the manufacturer or whoever he buys from?

A. I would say so.

Q. And that depends on various circumstances, such as the volume to be bought. Does it depend at all on the individual situation of the buyer, I mean for instance, such circumstances as whether the buyer is a new customer or a customer that the manufacturer is trying to win over and facts of that kind?

A. It could be on items not advertised but not on items

advertised. On unknown items they will do almost anything.

Q. There are various factors which enter into the allowance of the special discounts?

A. Yes.

Q. These special discounts the manufacturer or producer at least in some cases, desires to keep confidential?

[fol. 646] A. Yes.

Q. And that I take it is because of the fear that other customers will think they are in a position to be entitled to similar discounts whereas they have not been receiving the special discounts?

A. Yes.

Q. And that is the gist of the whole matter of special discounts?

A. Yes, as a rule.

Q. Ordinarily there are in the grocery business a large portion of the merchandise that a grocer deals in that is not subject to any of these special discounts?

A. Yes.

Q. Take fresh meat, vegetables and things of that sort. They are not subject to special discounts are they?

A. No, but you can get a better price.

Q. In buying what?

A. In buying a bigger quantity of them. If I was going to buy pork loins and if the National Tea wanted 100 boxes, they may get it shaved a cent or so.

Q. And they may find it difficult to dispose of such a large quantity?

A. Oh they always get rid of it.

Q. What we are saying is that these large discounts are practically foreign to fruits, meats and vegetables?

A. Oh yes.

Q. What percentage of the merchandise sold by the retail stores of the National Tea are comprised of fruits and [fol. 647] vegetables and perishables. Put them all together?

A. If they are combination stores,—some grocerery stores don't have meat markets and some have but if they have the vegetables and meats in the stores I should think the meats, vegetables and fruits should average 60 per cent of the total sales in a combination store. In a store without

meats I would say 35 per cent is a good vegetable business of the gross sales.

Q. Isn't it generally true that these special discounts can only be obtained on nationally advertised items?

A. Yes, because——

Q. Isn't that true?

A. Yes, as a rule anyway.

Q. What percentage would you say of the stock of an ordinary retail grocery like the National Tea would be made up of nationally advertised brands?

A. That is different, the National Tea are now getting into a lot of their own private labels.

Q. Then including their own private labels in the classification?

A. I would not be able to say anything accurate on that. I think maybe that would be 20 per cent of their own private labels.

Q. You mean 20 per cent of their entire stock would be their own labels?

A. Of their grocery stock.

Q. You are talking about dry groceries which carry labels?

A. Yes.

[fol. 648] Q. You think 20 per cent would be their own labels?

A. Yes.

Q. And the other 70 per cent would be?

A. They have 20 per cent of their own brands and they are duplicating a lot of items.

Q. Then 80 per cent would be nationally advertised lines?

A. They have nearly a complete stock of advertised brands and 20 per cent in their own labels which is duplicated in their own advertised brands.

Q. Do all manufacturers give special discounts?

A. I cannot say all do but a big percentage of them do but there is a considerable percentage that do not. I know some positively won't.

Q. This very special bargain you got from the Washburn Crosby Company where you say you got the lowest price you ever heard of on 5000 barrels of flour, $2.25 a barrel, what kind of flour was that?

A. To be used for private label. They had a brand on the contract but it wasn't one of their advertised brands.

Q. Had you been doing business with Washburn Crosby Company?

A. In their own private brands I had.

Q. To any large extent?

A. Yes.

Q. But only in their own private brands?

A. Yes and advertised brands.

Q. Your other business was done with some other milling company?

[fol. 649] A. Yes.

Q. So this would be representing a new field of business for Washburn Crosby with the National Tea?

A. Yes, they hadn't had that business for years and were trying to get in.

Q. Do you know anything about the brand of that particular 5000 barrels of flour as compared with other flour that the Washburn Crosby people were selling?

A. What was delivered I don't know, but what I bought was guaranteed to be equal to any advertised brand of flour. What they represented was as good as I wanted for my private label and I wouldn't put anything under private label except first class flour and that is what they told me it was.

Q. Did you examine it?

A. I left the company before it was used.

Q. It was never taken out, was it?

A. They could have sold it and they could have made $20,000 on the contract.

Q. Are you aware of the fact that the National Tea found the flour to be of such a type that they couldn't use it in their business and turned it back to the Washburn Crosby Company and bought other flour at a higher price?

A. That I don't know.

Q. In speaking of the Red and White, what is that?

A. It is what you call a volunteer chain.

Q. You stated that the retail stores were bound to buy [fol. 650] 90 per cent of their requirements from the wholesaler in that organization?

A. I think that is what the Red and White do because they have almost a complete line of private labels.

Q. You understand that is by contract between the retailer and the warehouse or wholesale house this requirement to buy 90 per cent of their private labels?

A. Yes, it is one of their rules when you join.

Q. Do you know what the rule is in regard to any of the other volunteer organizations?

A. The United Stores can buy whatever they like, they can do just what they like. They are controlled by Hancock Nelson.

Q. Do you know any of the others, the volunteers or co-operatives that are bound to buy a certain percentage or quantity of their requirements?

A. The Fairway is more of a co-operative. They are not just compelled but they ask you to buy because they are working into a lot of private labels too.

Q. And they are expected to buy substantially all their requirements?

A. Not all but nearly all they can.

Q. Do you know of any other organization that has similar requirements?

A. No, those are the three larger ones.

Q. In respect to the question of the cost to your store of your own private brands of stock, you say your private brands are delivered to your stores at lower cost than other nationally advertised brands, talking about the National Tea?

[fol. 651] A. Yes.

Q. These volunteers and cooperatives carry a large line of privately branded merchandise?

A. Yes.

Q. Have you any knowledge without imagining or surmising, how the price of the volunteers and cooperatives in privately branded groceries compare with the National Tea, that is the price to the retailer?

A. You mean——

Q. Let's talk about the cooperative organizations, the retailer owned wholesaler, do you know as to those whether there is any difference in the price. I mean the cost price to the retail stores?

A. Well, no, I couldn't say because I don't know what they charge to the stores.

Q. You made some general statements along this line that other than the National Tea Company, other big grocery chains, obtained similar prices and discounts. Have you any definite knowledge on that subject or are you inferring that from the fact they are big chains, particularly the special discounts?

A. If they get a bigger discount on the total?

Q. I was referring to the testimony you gave which was to the effect that other large grocery chains were getting similar special discounts to those of the National Tea. Have you any knowledge on that subject or is it a matter of inference on your part?

A. I cannot prove that they got it but it was in the trade journals and it was proven in the investigation and I have copies from the association.

[fol. 652] Q. What association?

A. The grocery association.

Q. Are you talking about Independent Retail Grocers Association?

A. I read these amounts in the Patman investigation.

Q. Isn't that what you are relying on, what you read in the newspapers about the Patman investigation?

A. Not the newspapers but I got the report from Washington. I wrote for it.

Q. Is not that your principal basis for drawing that conclusion?

A. To know the amount they got, yes.

Q. And that is a newspaper report of the Patman investigation?

A. No, regular government statistics. I have the book.

Q. A book published by whom?

A. It is a government record.

Q. And shows the testimony before the Patman commission?

A. Yes.

Q. As testified to before that commission?

A. Yes, and the different amounts testified to by the various chains.

Q. Now then, Mr. Landin, you said that in case of falling prices, the National Tea would have an advantage over an independent retailer?

A. I would say they have.

Q. On what theory is that?

A. When you control your own warehouse and get stuck [fol. 653] on any merchandise and think you are overloaded, you can make arrangements to trade it back to the parent company, or put it out into your stores and put on a drive and advertise it and sell it, but you don't have to call up the different grocers as the volunteer stores do and say, "can you use ten cases of this or that". A volunteer cannot send it out to the retail stores because they wouldn't take it.

Q. How about the independent?

A. An independent would not have the capacity to buy so much.

Q. He wouldn't have anything in the warehouse that he would have to take a loss on?

A. He has no warehouse but a basement but that would be a small percentage.

Q. And isn't it a fact the independents would have a greater advantage over the chains who had their warehouses overstocked because of falling prices?

A. If they should happen to get caught but they don't usually do it.

Q. If that doesn't happen then there is the advantage?

A. It can happen but it is not the usual thing. They sometimes store more groceries. I know competitors who have their basements full of merchandise but that is not the best thing.

Q. Now let me ask you this. Assuming that the independent retailers have their stores stocked relatively to the same extent as the stores of the chains and the chains in addition to stock in the retail stores had a large stock in [fol. 654] their warehouse and there was a substantial drop in the price of goods necessitating the disposal of stock on hand at prices out of line with which they were bought, the independent retailers would have a great advantage over the chains?

A. Yes.

Q. The independents would have the greater advantage?

A. Yes, there might be a little advantage.

Q. And that advantage would also apply to the cooperatives or volunteers who deal with independently owned jobbers. I am talking about the type where you have the group of associated or independently owned retailers. They would have the same advantage as the chains in regard to falling prices?

A. I think they would.

Q. In the matter of advertising, the principal advantage you speak of as far as the chains are concerned, is that they can use the newspapers to advertise a large number of stores in one ad?

A. Yes.

Q. And that applies only to the large cities?

A. It may apply also to a good sized country town.

Q. You mean where the National Tea would have more than one store?

A. In some towns they have two and that would be an advantage.

Q. How many towns in the State of Minnesota outside of Minneapolis, St. Paul and Duluth do they have more than one store?

[fol. 655] A. I don't know.

Q. Do you know of any?

A. I cannot say.

Q. Unless they have more than one store they would not have any advantage in the matter of newspaper advertising over the independents?

A. The chains always run ads in the newspapers where the independents don't feel they can afford it, a nice big ad really is helpful.

Q. The National Tea wouldn't run the ad unless they thought they could get their money out in value use?

A. But they can take a loss in one town and make it up in another, the ads usually run uniform.

Q. You mean the National Tea uses advertising in the newspapers for the purpose of taking losses?

A. No.

Q. If they wouldn't think they would get value they wouldn't advertise?

A. Yes, but they have done a lot of advertising that didn't do them a cent of good.

Q. Do you think they did advertising where they expected it would not do them any good?

A. No.

Q. That was a case of bad judgment?

A. Yes.

Q. The independents have the newspapers open to them if they want to advertise?

A. Yes.

Q. The volunteer chains do joint advertising the same as the regular chains in the newspapers?

[fol. 656] A. Yes.

Q. So there would be no advantage then as far as distributing the cost of advertising over a large number of stores?

A. In that way I don't think there would be much difference.

Q. You testified that the advertising cost to the National Tea—my impression was your testimony was that the cost of newspaper advertising ran as high as $150,000.00 to $200,000.00 a year?

A. I think $10,000.00 a month would not be unusual.

Q. Over what period of time?

A. I don't know just what time but advertising was a big item. I don't mean our cities alone but in all the papers we advertise in, I don't know how many towns we were in. We had ads maybe in 75 newspapers.

Q. What years did you do your largest advertising when you were with the company?

A. I don't just know off hand.

Q. Do you remember any year when you had as large an account as $200,000.00?

A. I know lots of months we ran $12,000.00 to $15,000.00.

Q. In what years?

A. In the best years.

Q. Are you speaking of Minnesota or the entire district?

A. No, all the territory and that would include some other advertising like handbills.

Q. Approximately how far back are you going when you [fol. 657] estimate the advertising of the National Tea at $150,000.00 to $200,000.00?

A. Well, I don't know, it might have been in the good years, in 1928 and 29 or along in 1930.

Q. Would you say the cost of all advertising for the entire company in 1928 was over $105,000.00?

A. I cannot say for sure but I know we had months when it was ten, twelve to fifteen thousand dollars.

Q. Would you say the cost of advertising for all stores in 1929 was $92,000.00?

A. I don't know.

Q. Or that the highest cost for advertising for the entire territory was $105,199.00?

A. If you have the figures, I cannot remember the figures now, but occasionally I would have ten, twelve to fifteen thousand dollars a month, often. If you have the records it must be the figures.

Recess until 2:00 P. M.

Q. On the question of financing, on the advantages in that aspect of the business, I understood you to say in the opera-

tion of the National Tea of Delaware in Minnesota and adjoining territory that you were able to get sufficient credit to operate the business without the assistance of the Illinois corporation. That is my recollection of what you said?

A. I don't think there was any such testimony unless when we got larger the company wanted to take it over themselves. They found it to their advantage to get the money from [fol. 658] Chicago rather than the bank here but when I did borrow money I could get all the money I wanted up to $200,000.00.

Q. Was there any time during the 15 years you were operating in Minnesota that you couldn't get all the money or credit you needed for the operation of the business without calling on the Delaware organization?

A. Yes.

Q. When was that?

A. When we took over the other companies.

Q. You mean the funds necessary to acquire them originally?

A. Yes.

Q. But after they were acquired did you need any money in the operation of the business from that time on?

A. I don't think we ever borrowed any money in Minneapolis after that time. The financing was all taken over by the Chicago company.

Q. Was that because you couldn't borrow it or for some other reason?

A. No, because we could get it cheaper from our own headquarters. They must have had a surplus, they took the loans over anyway, paid up the banks loans.

Q. I think you made the general statement that all the large chains had an advantage over the independents in that they had an abundance of capital on which to operate their business?

A. Yes.

[fol. 659] Q. In making that comparison and claiming that advantage, what were you assuming with reference to the condition of the independents?

A. That of course would be a difference. If the independents had a lot of money they would be all right. That would be a large percentage you know. It takes quite a bit of capital to operate business.

Q. Supposing an independent had sufficient funds to operate his business, would the concerns have any advantage over the small ones with respects to the operation of his own business?

A. No, not if he had enough capital.

Q. It is not possible to make any generalization as to all large chains having an abundance of funds to finance and operate their businesses?

A. I think they have.

Q. All of them?

A. They all seem to.

Q. Do you think the United Cigar Company had an abundance of capital to operate its business?

A. They did at one time.

Q. What happened to them?

A. They took leases that killed them for one thing.

Q. What eventually happened to them?

A. They went into the hands of the receiver.

Q. You are willing to concede when they went into bankruptcy they didn't have an abundance of capital?

A. Yes, I would say so.

Q. They were a large national chain?

[fol. 660] A. Yes.

Q. How about the National Truck?

A. I don't know anything about them.

Q. Don't you know they went into the hands of the receiver?

A. I don't know.

Q. That was a large chain, the National Truck?

A. I don't know anything about them in Minneapolis.

Q. Or any place now?

A. I don't know anything about them.

Q. You know about the Clarence Saunders Piggly Wiggly Stores?

A. Yes.

Q. What happened to them?

A. The stock market broke them.

Q. Do you know that to be a fact?

A. It was understood he was in the stock market and went broke.

Q. At any rate what ever happened to him, he eventually didn't have enough capital to operate the business?

A. No but he has opened up four or five times since.

Q. But his system of stores collapsed at one time?

A. Through his own fault.

Q. And that evidently was because for some reason he didn't have enough capital left to operate the business properly. Do you know about the F&W Grand?

A. No, I do not.

[fol. 661] Q. Did you ever hear of the James Butler chain of New York?

A. Yes.

Q. That was a large chain of 1500 or more stores?

A. I know they had a lot of stores but I don't know anything about them.

Q. They went into insolvency or receivership?

A. When?

Q. I am asking you?

A. I don't know.

Q. Did you ever hear of the Metropolitan Variety Stores?

A. Yes.

Q. Do you know what happened to them?

A. I guess they are in the hands of receivers. That is a five and ten cent chain.

Q. There have been a great many chains in financial difficulty in the last five or six years?

A. I think so, but I don't know.

Q. So you cannot generalize on these things at all, can you, and say just because a chain is or was a large chain it has an abundance of capital to keep operating?

A. As a rule they have.

Q. But there are a very great many exceptions?

A. No so many compared with the chains in business today. It is a small percentage.

Q. Do you know anything about the working capital or cash positions of the chains in business today outside of the National Tea as of the time you left them?

[fol. 662] A. I notice Sears Roebuck and Montgomery Ward made seven or eight million dollars in the last year.

Q. That was not the question.

(Question read)

A. Only by reading some of the statements I have seen. That is all I know about it.

Q. But you said that the independents were at a disadvantage because they could not discount their bills. That probably wasn't made as a uniformly applicable statement,

but you made it with reference to some portions of the independents?

A. They might be, it is in any business.

Q. You are not making that statement as applicable generally to independents?

A. No.

Q. And any independent that is operating and does not discount its bills or cannot discount because of lack of finances or capital is operating a business that is not capably or properly financed?

A. There are a lot of them. You notice two, three hundred failures each week continually and most of them are independents.

Q. Such a business is being operated without adequate financing?

A. There is a lot of that.

Q. I asked you whether any business in such a condition has proper or reasonable financing for the purpose of successful operation of that or any other business?

A. There may be some like that.

Q. What do you mean?

[fol. 663] A. There are some that are not properly financed but there are a lot that were properly financed but they have been going down.

Mr. Doherty: I move that be stricken as not responsive.

The Court: It may be stricken.

Q. Will any independent or any chain that has adequate working capital or is being adequately financed be able to discount its bills?

A. Yes.

Q. That is one of the first requisites of any business that hopes to be a success?

A. Yes, I would say so.

Q. Speaking of the question of warehousing would you say that the National Tea Company has any advantage over the volunteer chains or the type where the wholesaler is owned by the retailer?

A. That is hard to say I don't know if they have, I cannot say that.

Q. What advantage did they have?

A. In percentage?

Q. You are the one who says there is an advantage. In your mind what is it?

A. I think the chain store warehouse can operate on five or six per cent where a jobbing house cannot begin to do that for that price. He would have to pay eight, nine, ten or at least eight per cent.

Q. What is your basis for that comparison?

A. According to volume. I have operated National Tea warehouses as low as three per cent. It depends on your [fol. 664] volume and the amount of stores working out of the warehouse.

Q. And likewise the expense of a retailer owned wholesaler would depend on the volume of business?

A. They haven't the system or the expense that a chain has in a thing like that.

(Question read.)

A. They haven't got the amount of help in the warehouse and they haven't the system or the office. They have more detail in the office that builds up a bigger expense but still the chains have a bigger volume.

Q. Who has less employees in the warehouse?

A. The independent jobbing house.

Q. They have fewer employees and that makes larger expense?

A. No, I guess I am getting balled up on that. I am only telling you what I know in my own experience. My overhead was as low as three and four per cent and it went up as high as six per cent and I have talked to jobbers who told me that their overhead was from eight to twelve per cent.

Mr. Doherty: I move that be stricken as not responsive.

The Court: It may be stricken.

Q. Have you any reason for saying that the National Tea as compared with the volunteer chains or retailer owned wholesaler type having a large volume of business has any advantage over such a volunteer chain?

A. Just the one who owns their own warehouse unless it be [fol. 665] a question of financing. There might be some advantage to that.

Q. There might be?

A. There would be.

Q. You are assuming the cooperatives are not adequately financed?

A. They are not because the merchants who belong to

those things are not very wealthy and not very well financed. I know that, they just hold a small interest in the warehouse.

Q. Which ones are not adequately financed, I am talking about today?

A. I don't know how they are today. I know the merchants own the warehouse and are not very well financed because they are all hard up. I know that from talking to them.

Q. That is an inference?

A. Not entirely.

Q. You haven't any actual knowledge or records of these wholesalers in these volunteer chains?

A. I know a lot of them.

Q. As a matter of fact you don't know anything about the present financial condition of any of these volunteer chains?

A. I cannot say I know that this year.

Q. Even approximately?

A. I know a lot from the reports.

Q. And that is the extent of your knowledge?

A. Yes, that would be.

Q. In regard to this supposed advantage of the National Tea in the storage of products, I think you mentioned particularly the storage of eggs?

[fol. 666] A. That would be a small item. It used to be a big item but it isn't today.

Q. The consumption of storage eggs has reduced very greatly in the last ten or fifteen years?

A. Yes, farmers are raising hens all through the year now where in the years gone by we stored a lot of them.

Q. Nowadays the hens are being better educated and lay all the year around?

A. Or the hen houses are built better.

Q. The National Tea has no storage warehouse of its own?

A. No.

Q. No warehouse to store eggs?

A. No.

Q. You just placed them in a cold storage plant and paid the usual cold storage terms?

A. Yes.

Q. Then if you were able to sell them on a better market at a price sufficient to discharge the storage expense and leave a margin, that would be a profit?

A. Yes.

Q. And anybody else who wanted to do the same thing can make a profit?

A. If they had the capital to buy them.

Q. Volunteer chains could develop the same thing if they wanted to?

A. If they had the capital they could.

Q. And anybody in or out of the grocery business could do that?

A. I expect.

[fol. 667] Q. If the price didn't come up to expectation, they would suffer a big loss?

A. Yes.

Q. And a good many people have gone broke trying to make a profit on the storage of eggs?

A. I would say they have in the last year or two.

Q. On the advertising allowance, does that mean in substance this. Confine it to the National Tea for illustration: When you buy quantities of a brand in groceries the producer of those groceries will give you an allowance in consideration of your agreement to advertise this particular brand in some way?

A. Some of them.

Q. On the theory I suppose that the producer or manufacturer will share the benefit of that advertising with the National Tea Company?

A. Yes.

Q. And when you bargain for such advertising allowances, the understanding is you will actually advertise to the extent of the allowance?

A. Oh no. You might show a profit on the advertising.

Q. What do you mean you might show a profit on the advertising?

A. We wouldn't use it all up in advertising. We would be allowed more than the space comes to.

Q. Do you agree to?

A. No.

Q. Isn't that the basis on which the allowance is made?

[fol. 668] A. They don't usually set a certain space. They just want it featured and we do it, but the feature doesn't cost as much as the allowance we get.

Q. Don't you feature it in proportion to the allowance?

A. We lots of times feature an item on which we didn't get an allowance.

Q. I am not speaking about that.

A. In the majority of cases, we wouldn't use up the allowance for the advertisement and we would show a profit on that.

Q. That was true while you were running the National Tea Company?

A. Yes.

Q. That you were not advertising in accordance to the allowance made?

A. No, we showed a profit the majority of the time.

Q. Are you talking about the amount spent in newspaper advertising?

A. Yes, that is what I mean.

Q. Is that all you mean?

A. No, hand bills or window streamers.

Q. Display cards of various kinds?

A. Yes, we would figure all that in.

Q. Window signs?

A. Yes.

Q. How would you determine whether you had given value for the allowance, how would you value the display in the store, window streamers and display cards?

A. We wouldn't figure any special value in dollars and cents on that.

[fol. 669] Q. You are figuring the allowance on newspaper advertising only?

A. And hand bills and window streamers and display cards.

Q. The actual amount you spent in display cards and window streamers and hand bills?

A. Yes.

Q. The value of that advertising to the manufactnrer you are not taking into account whether it would be more or less than he allowed?

A. As far as nationally advertised brands, his rates were higher than ours but we showed a profit on the advertising but it might have benefited the manufacturer.

Q. You mean the actual cost of advertising would be less than the allowance?

A. Yes.

Q. Whether the advertising you used in the way of hand bills, store displays, window streamers was worth more to the manufacturer than the allowance, you would not be able to say?

A. No.

Q. Do you know whether that method of advertising allowance has been reduced now to a specific schedule of amounts for different kinds of advertising, so there is a fixed agreement as to just what will be done for an allowance in a different amount?

A. With the National Tea Company?

Q. Yes.

A. I don't know.

Q. Well, generally?

[fol. 670] A. I wouldn't know that now.

Q. The volunteer chains also obtained these allowances?

A. I don't know.

Q. At any rate there is joint advertising by volunteer chains over all the various retail outlets in newspapers?

A. Yes.

Q. I think you also said that the independents can obtain advertising allowances in small amounts?

A. It wouldn't amount to anything what they could get.

Q. That is because their independent purchases would be so small?

A. It would not pay the manufacturers to give them anything.

Q. But it could be obtained?

A. Some, maybe.

Q. With reference to the trucking, your theory of that advantage is that the chains can fill a truck load and with that one truck load serve a number of stores, so it can start out on a full load?

A. From one up to three, four or five stores.

Q. The volunteers can do that?

A. They might serve twenty-five with one load.

Q. Anyway, he has the same opportunity of going out with a full load as you have?

A. If he can get the business.

Q. Have you any figures on the average quantity deliveries to the stores in the volunteer chain as compared to yours?

[fol. 671] A. No, I have no figures.

Q. The independent wholesaler or jobber also could do the same thing. In the usual course or practice he could arrange it so he could start out with a truck load and serve the customers on one trip?

A. It depends on how he orders. He might not want anything this week or want the quantity and he might not need anything for a week or two while the National Tea makes a delivery every day to some of the stores.

Q. Do you know that the independent jobbers are not able to so arrange the deliveries that generally speaking they cannot start out with a full truck load and deliver them?

A. No, he cannot because if I want something he won't send it to me every day and they have to do it because the majority of independents don't buy so heavy.

Q. I am talking about the general practice not the occasional trip?

A. As a rule I don't think it would be the same.

Q. Some of these volunteer chains are more conveniently warehoused for the purpose of delivery than the National Tea?

A. I would say not.

Q. Take the Winston & Newell Stores in the IGA. They have warehouses in Minneapolis and Fargo, North Dakota?

A. They may have forty or fifty stores in North Dakota. The National Tea only has one-half a dozen in the state.

[fol. 672] Q. In any event the IGA has warehouses in Minnesota and in North Dakota?

A. I don't know that.

Q. Do you know whether the Fairway system has warehouses in Minneapolis and North Dakota?

A. I think they have only one warehouse for this unit. I don't know whether they have more than one that I know of.

Q. How about the Nash Finch Company?

A. They have warehouses all over the country, but no group stores.

Q. They have branch warehouses all over the state?

A. Yes, but they have no group stores. They have about fifty warehouses I understand.

Q. So that their deliveries are usually for a short distance from the branch warehouse to the point of delivery?

A. I would say so.

Q. Did the National Tea during your time do all its own trucking?

A. Not for the whole period.

Q. Wasn't it true during all the time you were there the National Tea was trucking on its own trucks and hiring trucks for deliveries?

A. In the country you mean?

Q. Yes?

A. Yes.

Q. In the sale of vegetables, farm products, the great bulk of that consumption by customers of the National Tea is in the large cities?

A. Yes.

[fol. 673] Q. And on that the National Tea makes its purchases from the Minneapolis market and from farmers within delivery distance within the Twin Cities?

A. Yes.

Q. Out in the country stores, the managers of the country stores buy their requirements as far as they can, locally?

A. No, not when I was there. They shipped everything from here.

Q. From Minneapolis?

A. Yes.

Q. You mean when you were managing the stores, the local stores of the company didn't do any buying locally for stocking their own stores?

A. Very little.

Q. Do you know what the practice has been since you left them?

A. I understand they changed that and then changed back again and deliver from the warehouses again now.

Q. So the local storekeepers don't buy locally for their own needs?

A. That is what I understand.

Q. The produce purchased for sale in Minneapolis and St. Paul, how was most of that purchased while you were in charge of the National Tea?

A. From the markets or from the farmers. In the summer time when the fresh vegetables were in, we bought the majority from the farmers.

Q. While obtainable on the Minneapolis market?

[fol. 674] A. Yes and out of season we would have it shipped in from Texas and California, wherever we could get it when they were not available in Minnesota.

Q. When you arranged to buy it from the farmers through the gardeners, you would arrange to purchase it in load lots?

A. Generally I would say, it would depend on the item.

Q. And you said you would fix the price?

A. Yes, we would set the price, our buyer would put the price on the card the next day after we got it.

Q. Did you allow the farmer a fair price?

A. Well, we got it pretty cheap.

Mr. Doherty: I move that be stricken as not responsive.

The Court: It may be stricken.

Q. Did you allow the farmer a fair price?

A. I would say sometimes we did not. In the majority of the cases we got it at our own price, we would set our own price.

Q. And you say that wasn't fair to the farmer?

A. It was lower than we could get it on the market.

Q. Did you figure it was fair to the farmer?

A. No.

Q. Then you are responsible for treating the farmer unfairly in respect to the produce you bought from them?

A. I will have to admit that.

Q. You say you bought it at prices below the market?

[fol. 675] A. At times, yes.

Q. Why would the farmer sell it?

A. Because they could haul it there and not worry about standing on the market for four or five hours disposing of it little at a time. They would come in and unload it.

Q. If they took it to the market they would have to peddle it and might have to stay there all day?

A. Not all day but they might have to stay all morning.

Q. Were they always sure of selling it even then?

A. Sometimes they were not. They had to take a chance on that.

Q. They had the choice of doing that or taking the whole load to the National Tea and unloading it?

A. They had their choice.

Q. And if they didn't prefer to sell it to you at that price, they didn't sell it?

A. They had their own ideas about it.

Q. It was true you bought from the same farmers year after year?

A. Yes, as a rule.

Q. And those farmers were very glad to have the National Tea as their buying customers?

A. Some of them.

Q. If they were not glad of that opportunity, they probably would not have followed it up year after year?

A. Well, it depends on circumstances.

[fol. 676] Q. On your statement that the chains have a larger turnover than the independents, what is your basis for that statement? Is it your own experience or something you read or what?

A. It is my own experience.

Q. Since you have been in the retail business?

A. Since and before.

Q. You are talking about your own personal experience in the manner of turnover in your own stores?

A. It would be the only one I absolutely know about.

Q. What has been your rate of turnover?

A. Per year? What do you mean?

Q. That is the way in which you speak of it isn't it, rate per year?

A. Do you mean on the total volume?

Q. What did you mean when you said the chains had a larger turnover than the independents?

A. Turn the stock so many times per year.

Q. In that sense what is your rate of turnover?

A. I would say about ten times, maybe.

Q. You made some points, Mr. Landin, c. the fact which you said occurred, that after you left the Minneapolis branch, there was a large turnover in personnel and that turnover in personnel was a great detriment to business. That would depend on the personnel would it not?

A. Yes.

Q. If by the turnover you improved the personnel it would be a good thing for the business?

[fol. 677] A. That would show after awhile.

Q. If the turnover improved the personnel it would be a benefit rather than a detriment?

A. Yes.

Q. I suppose you will give the subsequent manager of the Minneapolis branch credit at least for trying to improve things when they turned over the personnel?

A. They might have tried but I think they failed.

Mr. Doherty: I move that be stricken as not responsive.

The Court: It may be stricken.

Q. They were not trying to wreck the business?

A. I suppose not.

Q. At least not intentionally?

A. No.

Q. You made some claims that the chains were causing unemployment or reduction of employment by reason of the elimination of salesmen, in other words no salesmen between the wholesale branch and retail stores?

A. That has been true but that is years past now.

Q. The same thing followed in the development of the volunteer chains, didn't it?

A. I think so.

Q. And that is true whether you are thinking of the retailer owned wholesaler or the independent wholesaler and his group?

A. I don't know so much about that, it depends on who they are.

[fol. 678] Q. Take the IGA where the stores are bound to buy 90 per cent of their merchandise would that be true in that case?

A. No.

Q. And the wholesaler owned retailer. There would not be any occasion for salesmen there?

A. I don't know how they do that.

Q. The retailers own the wholesale house?

A. Yes, but the salesmen have a right to call and take orders.

Q. Do you know whether the retailer owned wholesalers have any salesmen as a matter of fact?

A. Yes, some of the jobbing houses have salesmen.

Q. I am talking about the retailer owned wholesaler?

A. No, not of their own.

Q. Can you tell us the total number of employees of the National Tea when you left the business?

A. I don't just remember the figure.

Q. Do you know how many were employed in the Minneapolis central office when you left there?

A. I couldn't say.

Q. Could you tell us approximately?

A. I think we had as many as 80 to 90 with the warehouse. We must have had a couple hundred, with the bakeries.

Q. And you had 215 stores. What was the average number in the stores?

A. It might average three.

Q. So there were 665 employees in them?

[fol. 679] A. Yes.

Q. And you had a great many extras on rush hours?

A. Yes, Saturdays mostly.

Q. I have a note that the Diamond Match Company gave a rebate which was a matter that was strictly confidential between you and the president of the company?

A. Yes.

Q. Nobody else was supposed to know anything about it?

A. The office manager here would know it.

Q. How do you account for the fact that the letter was written by the secretary of one of the vice presidents?

A. I don't know how they handled it in Chicago.

Q. The president evidently didn't consider it as confidential as you did?

A. He considered it pretty confidential when he told me.

Q. If he did he would not have had a secretary of one of the vice presidents write the letter would he?

A. I don't know what he would do down there, but I know what he told me.

Q. You were talking about the advantage the chains have by reason of the fact they have no delivery expense?

A. Yes.

Q. If that is an advantage why don't the independents eliminate deliveries and pick up the business?

[fol. 680] A. They don't go to cash and carry stores and they have to deliver to them.

Q. Well they have the same opportunity of picking up their business?

A. They could not compete with them in price. The cash and carry customers you could not get into a delivery store.

Q. As far as the delivery expense is concerned the independents could compete if they eliminated the delivery expense?

A. No, their merchandise costs more to the store.

Q. But you said that delivery item was two or three per cent of the sales?

A. Just about.

Q. Is your own personal experience the basis of your testimony?

A. Yes.

Q. If the independent eliminated delivery, they could reduce their price two to three per cent and still have a margin?

A. Yes, but there is a difference. Some people won't go

into the cash and carry stores because they want their groceries delivered and charged.

Q. And the independent wants the business of the people who want it delivered?

A. Yes.

Q. And if he didn't think it was an advantage to have it delivered he wouldn't deliver it, would he?

A. He would have to do it to survive, otherwise he wouldn't be in business. I know cash and carry stores in [fol. 681] certain neighborhoods who are not making enough to make their salt. The people want their merchandise delivered. If I started a cash and carry in that neighborhood I would starve.

Q. In that neighborhood the fact of delivery gives them an advantage?

A. In that neighborhood.

Q. And with respect to the portion of the trade who want delivery, the giving of delivery gives them an advantage?

A. No, there are more cash and carry stores in my neighborhood than the delivery stores.

Q. Then why don't they go into the cash and carry stores?

A. He couldn't compete with them, he has to make a living off that store and the chain store has a thousand stores to make their dividends on.

Q. If they didn't make a profit on the average, they would not be making any profit on the total?

A. They make their profit from the accumulation of the individual stores.

Q. The fact of the matter is this, that the chains eliminate delivery in order to appeal to the class of people who want to do a cash and carry business and the independents give delivery service because they want to appeal to the class who want delivery service and if they didn't think that the expense of delivery would justify the business, they would not have it that way?

A. Well, take the National Tea——

Q. Answer the question.

A. It would be hard to answer, because the chain stores are doing delivery in a small way.

[fol. 682] Q. Then where they are doing delivery, to that extent they haven't any advantage in saving expense on delivery?

A. Yes, they have a little school boy delivering after school and charge the customer a nickel.

Q. The independents could give the little boy a nickel to deliver?

A. But the independents have their own delivery trucks.

Q. But they wouldn't have to have them if they didn't think it an advantage, so in both cases they are doing business in a way which they think is an advantage to them?

A. Yes, but the cash and carry is getting away from their own idea, they are cash and carry and delivery both.

Mr. Doherty: I move that be stricken.

The Court: It may be stricken.

Q. You say the credit losses of the National Tea are inconsequential?

A. Yes, with the total amount of the business.

Q. Is that because they don't have any losses or because the store managers assume the loss?

A. That has been the case.

Q. As a matter of fact isn't it a very rare thing that you ask a manager to assume a credit loss?

A. No, they have had to stand them, checks and credit losses too, many times.

Q. You are talking about when you were manager?

A. Yes.

Q. But that has not amounted to a very substantial amount?

[fol. 683] A. I don't know the total but it has been often.

Q. When they take a bad check?

A. The manager is held responsible.

Q. Is he told not to take the check?

A. Yes, as a rule.

Q. So he is violating a rule of the company?

A. He is trying to get a little business.

Q. Are all managers permitted to give credit?

A. In a small way they do.

Q. And if they give credit within the limit of their authority and a loss is suffered, you wouldn't ordinarily ask them to stand it?

A. No, not that way.

Q. With reference to whether there is any substantial loss from the business, are you aware of the fact that after you left, the company charged off $8,000.00 in bad account which accumulated during your regime?

A. No.

Q. You are not aware of that?

A. No.

Q. I don't remember whether I asked you this question. In regard to the special discounts, talking about the discounts above the regular trade discounts, it is a fact is it not that the volunteer chains have the same opportunity of getting those discounts within the limit of their volume that anybody else has?

A. Not to the same advantage.

Q. I am assuming in proportion to their volume?

A. Take the Red and White. They have their own brands and they cannot get that advantage.

[fol. 684] Q. I mean with respect to other brands of goods they buy outside of their own brands?

A. That I don't know, they don't seem to handle any advertised brands to amount to anything and that is where they would get it.

Q. Does the National Tea get allowance on its own brands?

A. No, only they buy that merchandise for less.

Q. Then they are on a par with volunteers in that respect?

A. The volunteers don't buy in such a big quantity as the National Tea might.

Q. There are a number of volunteer chains that have a larger buying volume than the Delaware Corporation in Minnesota?

A. Yes, but the main point is Chicago and the item they would save on would be canned fruit.

Q. The buying through Chicago is a very small percentage of its total?

A. It is getting to be more so.

Q. I mean during the time you were there.

A. The last year or two it was growing, but before that time it didn't amount to much.

Q. Even in the maximum growth it was still a relatively small per cent?

A. In some lines. We didn't have anything but our own brands in fruits of all descriptions. We didn't handle any advertised brands of vegetables and canned vegetables we had all our brands in the last few years.

Q. But there is no special discount entering into that?

[fol. 685] A. No, but a better buying——

Q. But we are talking about the special discounts?

A. No, we switched from that.

Q. Maybe you have but I haven't. Eliminating your own private brands, I will ask you whether or not the purchases passing through the Chicago Office have not been a very small percentage of your total purchases always?

A. Yes, they have been.

Q. Mr. Landin, has there now been produced here in court all of the letters of the National Tea which you have in your possession?

A. They are all here but I don't know whether or not they have all been produced.

Q. If they are not in evidence will you produce the balance?

A. I haven't them, they are all there.

Q. Are there some more?

A. I don't know.

Mr. Doherty: I will ask counsel for the state if they have any more letters or papers belonging to the National Tea?

Mr. Rutschick: We have letters which were not introduced.

Mr. Doherty: Of the same character as those introduced in evidence?

Mr. Rutschick: I would say generally yes. They are communications between the National Tea of Chicago and this witness.

Mr. Doherty: I ask that they all be produced and submitted for our inspection.

[fol. 686] Mr. Orfield: The state has no objection unless the witness objects.

Mr. Landin: Unless they are ordered over by the court on this subpoena.

Mr. Doherty: Mr. Landin, the state has no objection to turning over the letters and documents which were in your file of the National Tea if you have no objection. Have you any objection?

A. I don't think so but I would like to look them over.

Q. Mr. Landin, this selection of letters I have in my hands here are all letters and papers which came into your hands as manager of the National Tea of Minneapolis?

A. Yes.

Q. And letters which you have taken from the files of the National Tea or the office of the National Tea and kept in your possession?

A. Not from the files, from the mail which I received.

Q. They are all letters which concern the business of the National Tea?

A. Yes.

Q. And came to you not in your personal capacity but as manager of the National Tea?

A. I imagine manager of the National Tea.

Q. And they relate to the business of the National Tea and not your personal business?

A. Yes.

Q. Are you willing to surrender your file voluntarily to to the National Tea now?

Mr. Orfield: Objected to as incompetent, irrelevant and immaterial.

[fol. 687] The Court: It is not a matter between the state and the witness but this witness and the documents. I will permit the answer.

A. I have turned them over to the state as far as I am concerned.

Q. Are you willing they should go back to the National Tea from where they came?

A. They can go back after they have served their purpose. I have nothing to do with them.

Q. As far as you are concerned you are willing to relinquish any claim you have to them or any right to their possession?

Mr. Orfield: Objected to as immaterial.

Q. All you want to do is to be protected under the subpoena?

A. As far as I am concerned. I have turned them over to them, I don't need them.

Q. At the conclusion of the trial and after serving the purpose of the state and if not introduced in evidence, you are willing they should go back to the National Tea?

A. I don't know why it should make any difference to me. I don't need them. I just kept those chain store letters for my own reference but they wouldn't do me any good now.

Mr. Doherty: I wish at this time to present the attorneys for the state with notice, at the conclusion of this trial by the plaintiff National Tea that any letters or papers in this

file which have not been introduced in evidence shall be turned over to us for delivery to our client, the National Tea Company.

[fol. 688] Q. In that connection I will show you a letter dated January 3rd, 1933 which appears to be written by Gamble Skagmo to Mr. S. H. Massman, 1000 Crosby Street, Chicago. Who is Mr. Massman?

A. Vice president of the National Tea.

Q. This was sent by Mr. Massman to you?

A. If you want to enter into that all right but I wanted to keep the Gamble Stores out of it.

Q. How did you get it?

A. It was given to me by Mr. Skagmo.

Q. As manager of the National Tea?

A. I attended the meeting.

Q. As manager of the National Tea?

A. Yes.

Q. So this came into your possession as manager of the National Tea?

A. Yes, but I don't think it should go in evidence so asked them to leave it out.

Q. Are these copies of financial statements of the National Tea?

A. Yes.

Q. Made in the Minneapolis office?

A. No, they were made up in that form for me. Two, one for the office and one for me.

Q. These concern exclusively the business of the National Tea, and came to you solely because you were manager of the National Tea?

A. Yes but they wouldn't give them to anybody else.

Mr. Doherty: We also include in our demand, financial statements of the National Tea dated December 31st, 1932 and statement of the National Tea dated December 31st, 1927.

[fol. 689]. Recess 20 Minutes.

Q. Do you take the Progressive Grocer?

A. Yes.

Q. Do you remember the report made last July of an investigation into the operations of a selected number of stores, twenty-three stores in reference to various statisti-

cal methods, such as sales and various claims of expense including delivery and advertising. Have you any recollection of that?

A. I don't remember.

Q. I would like to show it to you and call your attention to the five selected stores of the combination cash and delivery type, in which is termed the average delivery expense to be seven-tenths of one per cent of the sales. Do you remember reading that analysis?

A. No.

Q. Do you have confidence in analyses of this kind made by investigation of the Progressive Grocer?

A. No, I don't think they are worth the paper they are written on.

Q. Any investigation no matter who it is conducted by?

A. No.

Q. Whether by the Federal Trade Commission?

A. They came along four or five years afterwards and don't mean anything at the present time.

Q. This investigation was made on 1934 sales and published in 1935 in July. Would you think that was too late to be of any value. It is an investigation on cash and delivery?

[fol. 690] A. Well cash and delivery would have some effect on that, there would not be any losses on credit.

Q. I was only talking about the delivery expense?

A. It looked to be very low.

Q. But it is the result of this investigation of the Progressive Grocer?

A. I don't think much of it.

Q. Is this Progressive Grocer circulated among all types or mainly the independent grocers?

A. I don't know. I happened to get it but I don't know much about it. I don't read it very often.

Q. Is it not a publication which circulates merely among the independent grocers?

A. I think so.

Mr. Doherty: That is all.

Redirect examination.

By Mr. Orfield:

Q. You have testified that when you left the National Tea Company in the Spring of 1933, there was a consider-

able turnover in personnel. You have also testified on cross-examination that it would be possible in connection with such a turnover that they would get better men. Suppose however that the men which left the employ of the National Tea and those that came in were men of equal ability. Would the old men be of less value to the company, their efficiency being equal?

A. I would say more valuable.

[fol. 691] Q. Would there be a tendency for the coming in of the new men, even equally efficient, result in the loss of trade?

A. Yes, there would.

Q. You have stated that you sometimes advertised in as many as 75 papers at the same time. Where were the ads for these papers prepared?

A. In the latter years they were prepared in Chicago but I used to look after that myself but in the last two or three years I was there they were made up in Chicago.

Q. Was there a saving in connection with the preparing and distributing of ads to have them made up in that way?

A. The ads would be made up and we would send them to the different papers in the different towns. The instituting copy would be made up there. They had more time and better equipment to make up the copy.

Q. Did you find that the Chicago office could prepare ads more efficiently than your Minneapolis office?

A. They could save a lot of time for us because we didn't have much of an advertising department and it relieved us altogether.

Q. By having the matter of the preparing of the ads taken off your shoulders, it gave you more time for supervision of other matters?

A. Yes, it did.

Q. You referred to the matter of the storage of eggs and stated sometimes losses have been incurred by certain persons in connection with such storage. During the 15 years [fol. 692] that you were general manager of the National Tea Company, was there ever a year when the National Tea suffered a loss by reason of its storage?

A. I don't think there was.

Q. Don't you know positively?

A. Well, in my opinion I don't think there was any. No I don't think there was.

Q. You have referred to the financial strength of the volunteer chains in which the retail stores owned the wholesale house. What would be the financial strength of such a volunteer depend on. Who owns the wholesale house?

A. Every member would have to put in a certain amount of money in this jobbing house to carry the stock in the warehouse.

Q. Did that essentially means that the financial strength of such a volunteer would depend on the financial strength of the independent members?

A. Yes.

Q. Do you know how the financial strength of the volunteer chain competing house, compared with the financial strength of the National Tea of Illinois?

A. I don't think there would be any comparison.

Mr. Doherty: I move that be stricken as not responsive.

The Court: It may — stricken.

Q. Do you know?

A. I couldn't say I do know.

Q. You stated you could at all times get money from the [fol. 693] local banks. Was that on the strength or credit of the National Tea of Delaware or was it rather on the strength of the National Tea of Illinois?

A. We had a guarantee from the National Tea of Illinois for a certain amount.

Q. If you had not had that guarantee could you have gotten all the money you needed from the National Tea of Delaware?

A. No, sir.

Q. Then was it of benefit to you to have this connection with the National Tea of Illinois when you did any borrowing in the earlier years?

A. Yes.

Q. In connection with the question to which you have referred, whether the jobbers are able to carry full truck loads in making deliveries, can you tell from your experience as an independent store owner and more recently as the owner of a small chain, whether the jobbers do as a matter of fact make their deliveries in full load lots?

A. No, they do not.

Q. You have referred to the matter of having a bakery operated by the National Tea. Will you state what your

experience was as to whether the fact you had a bakery effected a saving for you?

Mr. Doherty: Objected to as improper re-direct examination.

The Court: I will permit it if you have overlooked anything.

(Question read).

A. Yes, it did.

[fol. 694] Q. Will you explain the amount of saving effected in this way?

A. That depends on the volume.

Q. With the experience you had with the volume you had, what would be the difference in the cost of a loaf of bread produced in your bakery as compared with purchasing a loaf of the same quality in the open market?

A. At one time we were producing nearly a million pounds a month. Therefore our bread cost was very low.

Q. How low?

A. I don't remember exactly but we were selling it in the stores at a nickel and showing a profit at that time.

Q. At that time what could you have bought the corresponding loaf for in the open market?

A. You couldn't buy any bread that would be equal for less than seven or eight cents a pound loaf.

Q. So you were actually selling bread in your stores at two cents a loaf less than you could have bought the same bread for in the open market?

A. Not the same bread, but we figured as good. Our bread was quality bread.

Q. Is it then true that your bakery earned a profit for the company?

A. Yes, at that time I think we were charging about one-fourth of a cent profit per pound loaf out of the bakery into the stores and the bakery showed a profit of around two, three thousand dollars a month.

[fol. 695] Q. What effect on your volume did this fact have that you were able to sell bread so cheap?

A. That was a big volume builder at that time, it was a big weapon.

Q. Do you know of any volunteer chain maintaining its own bakery?

A. At that time?

Q. Yes.

A. No.

Q. Would it then be true you had at that time a distinct advantage over the competing volunteer chains by reason of the fact you had your own bakery?

A. Yes, we did.

Q. And you had the same advantage over the independent stores?

A. Yes, we had.

Q. Did the National Tea operate any factory besides the bakery?

A. Yes, we had a mayonnaise kitchen for a few years.

Q. Did you effect a saving by reason of your mayonnaise kitchen?

A. Yes.

Q. Do you now remember the difference in the cost in the production of mayonnaise in your own kitchen and in the open market?

A. I don't know the percentage but it was much less. We sold it for less and there was a big profit on that.

Q. Were the competing stores able to match your price? [fol. 696] A. No.

Q. Were there any volunteers then operating which maintained their own mayonnaise kitchens?

A. Not that I know of.

Q. Did you then have an advantage over the competing volunteer chains by reason of this mayonnaise kitchen?

A. Yes.

Q. Did the National Tea of Illinois maintain factories in other lines?

Mr. Doherty: That is objected to as repetition.

The Court: I don't think it had been gone into on direct examination.

Q. I show you State's Exhibit 22 and ask you to state what it is?

A. It is the National Tea of Minneapolis financial statement ending December 31st, 1927.

Q. Did this statement come to you in the usual course of the business of the company?

A. Yes.

Q. And does it pertain to the business of the company?

A. Yes.

Mr. Orfield: Offer in evidence State's Exhibit 22.

Mr. Doherty: We have no objection if these additional statements serve any purpose, otherwise we object to encumbering the record with a lot of statements which are duplications of what we have in evidence already.

The Court: I will receive it for what it is worth.

[fol. 697] Q. Showing you State's Exhibit 23, what is that?

A. A financial statement of the National Tea of Minneapolis ending December 31st, 1932.

Q. Did this statement come to you in the usual course of the business of the National Tea?

A. Yes.

Q. Does it have to do with the business of the company?

A. Yes.

Mr. Orfield: Offer in evidence State's Exhibit 23.

Mr. Doherty: Does this exhibit cover all the operations of the company, in Minnesota and all other districts?

A. Yes, the whole district, Home Economy and Piggly Wiggly.

Mr. Doherty: Objected to as immaterial, without any purpose and unnecessarily encumbering the records, a duplication of whatever figures it contains and also without any additional information. I would like to move to strike the preceding exhibit, number 22.

Mr. Doherty. I assume Exhibit 22 covers the entire company operations and not Minnesota only?

A. All of the operations of the Delaware corporation.

Mr. Doherty: It covers the operations of the entire district?

A. Yes.

(Argument by counsel)

The Court: It may be received.

Mr. Orfield: That is all.

Recross-examination.

[fol. 698] By Mr. Doherty:

Q. Have you any more of these financial statements of the company in your house?

A. No.

Q. Are you sure?

A. I don't think I have.

Q. You say you don't think you have?

A. I am sure, I am just about sure.

Q. If you have any others will you return them to the National Tea?

A. I don't think I have any.

Q. The guarantee of the president of the National Tea of Illinois you say was necessary for the obtaining of credit by the National Tea of Delaware?

A. Yes.

Q. The National Tea of Delaware was a pretty large chain?

A. Yes, but that was in the early days. That guarantee stood until they took all the loans away and carried them in Chicago.

Q. When was the matter of making loans taken from the Minnesota office?

A. It might have been made in 1929.

Q. Up to that time was it your experience the National Tea of Delaware could not obtain credit without the guarantee of the National Tea of Illinois?

A. I don't think so. We had a guarantee for $200,000.00.

Q. And without that guarantee you aid you couldn't get credit?

[fol. 699] A. You couldn't get it before we got the guarantee.

Q. After you got the guarantee, was it necessary, was the guarantee necessary in your estimation to get proper credit?

A. Yes.

Q. Up to when?

A. I think you would always have to have collateral or the guarantee to get money at a bank.

Q. The fact you had 215 stores operating wasn't sufficient to give you credit?

A. We didn't have at that time. When we got larger we didn't try to get loans.

Q. You just said you didn't think at any time that you could get credit without collateral or the guarantee?

A. I don't think you can get any now without collateral or guarantee. I don't think you can.

Q. In your testimony in regard to the financial strength of the Minneapolis chains, you mean if they have collateral or guarantee acceptable to the banks, they can get money?

A. Yes, I think so.

Q. And not otherwise?

A. I don't imagine they could.

Q. You said the jobbers don't make delivery in full truck loads. You mean they don't deliver a full truck load to any one store?

A. I think so.

Q. But when they start out they are apt to have a full truck load?

A. They could, but nine out of ten times they don't.

[fol. 700] Q. In estimating your profit on bread, what expense was included in the operation of the bakery?

A. All overhead to the bakery is charged to the cost of the bread, interest, wear and tear, depreciation, taxes, depreciation on machinery, everything that pertains to the bakery is charged into the cost of the bread.

Q. And the bread that was selling for five cents a loaf was charged to the store at what price?

A. It fluctuated some, but we took one-fourth of a cent profit on a pound loaf.

Q. The bakery did?

A. Yes, that is the way we would bill it into the stores and in later years billed it at absolute cost, without profit to the bakery.

Q. The Red Owl stores were selling bread purchased from bakeries?

A. Yes.

Q. They were meeting your price?

A. I don't know whether they were all the time.

Q. But generally speaking as far as you can remember?

A. I don't think there was anybody competing with us in bread.

Q. Wasn't the Red Owl selling bread at the same price?

A. Not in those days. I don't know if they were operating then.

Q. When do you mean, up to March, 1933, by those days?

A. They were buying bread from some bakery.

Q. And selling it for the same price you were?

[fol. 701] A. I don't know, but I know they were shipping their bread from Minneapolis.

Q. What was this mayonnaise plant?

A. It was just a small plant up in the warehouse.

Q. It was just a stove and a mixer?

A. Yes, I think so, but we turned out a lot of mayonnaise.

Mr. Doherty: That is all.

JAMES BAILEY, sworn on behalf of defendant, testified.

Examined by Mr. Orfield:

Q. What is your name?

A. James Bailey.

Q. What line of business are you engaged in at this time?

A. I am secretary of the St. Paul Retail Grocers Association.

Q. And how long have you been such secretary?

A. Five years last January.

Q. What business experience did you have before that time?

A. I was in the soap business as a salesman.

Q. For how long?

A. Thirty years.

Q. And where was that business conducted?

A. In St. Paul.

Q. Have you ever been in the manufacturing business?

A. That was manufacturing.

Q. You were salesman for a soap manufacturing company?

[fol. 702] A. Yes.

Q. And an officer?

A. A director for the last ten years.

Q. As manufacturer of soap and salesman for thirty years, did you become thoroughtly familiar with the various phases of the business?

A. Of the soap business, yes.

Q. Did you ever make sales to the National Tea Company?

A. Yes.

Q. In what quantities?

A. Generally carloads.

Q. Did you also make sales to other companies in smalleh lots?

A. Yes.

Q. What discount did you give by reason of carload lot purchases?

A. The regular discount on soap is 10% off the single box and 12½% a box in carload lots.

Q. As far as the carload lot is concerned, there was an additional quantity discount of 12½% a box?

A. No, not to anybody. It was 10% and 12½% on the box and 2% if paid in ten days.

Q. Three discounts?
A. Yes.
Q. The cash discount was 2%?
A. Yes.
Q. Did everybody get that?
A. If they paid the bill in ten days from the date of the invoice.
Q. In small purchase was there any other discount?
[fol. 703] A. No.
Q. In carload lots there was an additional 10% discount?
A. No, it was 10% in carload lots, not in addition but 12½% for the carload.
Q. Suppose an independent store wanted to purchase ten or twenty cases, what discount would he get?
A. I don't understand your question.
Q. Suppose an independent would want to buy ten or twenty cases, would you sell to them?
A. That would have to be through the jobber, wholesale grocer.
Q. Do I understand you sold only in carload lots?
A. No, but you had to be on the jobber's list to get that 10% and 12½%.
Q. But you sold to the National Tea direct?
A. Yes, but they are on the jobber's list.
Q. Did you sell to any independent direct?
A. No, not to an individual retailer but an individual jobber of course.
Q. Did you sell to any other grocery chain except the National Tea?
A. The Red Owl.
Q. Did you sell to any other grocery chain except the National Tea?
A. The Red Owl.
Q. Did you sell to any large grocery chain who would purchase from you?
A. The National Tea was on the jobber's list. We would sell to any large wholesale house that a retailer would name.
[fol. 704] Q. Would it then be true that few grocery chains had an advantage over the independent stores because they could buy from you at these cut rate prices, at these lower prices?
A. Not cut rate.
Q. No, but—

A. Yes, they would have the advantage over the retailer that got the jobber's price and 12½% a box.

Q. What was the price of such a box before the discount of 12½%?

A. The soap varied.

Q. What was the price within limits?

A. It was changing all the time on the market. You got 10% off for the $4.00 box and then a discount over that was the jobber's list.

Q. So there was a quantity discount of a little more than 50c per box?

A. Yes.

Q. But the big grocery chains could buy from you direct?

A. Yes.

Q. And the independents could not get that because they could not purchase from you direct?

A. No.

Mr. Orfield: That is all.

Cross-examination.

By Mr. Doherty:

Q. You sold to others beside big grocery chains?

A. Yes, we sold the Red Owl.

Q. Did you sell to others than big grocery chains?

[fol. 705] A. Yes, we sold to everybody, but not direct.

Q. Some you sold direct and some through the jobbers?

A. We sold through the jobbers to all the regular retail grocers, the business had to go through the jobbers.

Q. Any particular jobber?

A. No anyone he would name.

Q. If a retail grocer wanted to buy some of your soap, you would tell him the jobber who would handle it?

A. He would name the jobber and we would turn it over to the jobber and it would be delivered to him from the jobber's store.

Q. Was there any limit on the quantity which could be bought that way?

A. Taking $4.00 as a basis per box, five boxes would be $3.95, ten boxes would be $3.90 and 25 boxes would be $3.85.

Q. He could buy more than one box?

A. Yes.

Q. And any independent grocer who had a large enough

demand so he would take a large quantity, would get the same discount as a chain store?

A. No, he would have to buy through the jobber. If the jobber wanted to cut his price we didn't dictate to him.

Q. The retailer would have to pay to him the jobber's profit?

A. Yes.

Q. Wherever you sold to the chain, it was without going through the jobber?

[fol. 706] A. Yes, direct, because he was on the jobber's list.

Q. Were all the chains on the jobber's list?

A. I only sold National Tea and Red Owl.

Q. When did you go out of that business?

A. In December, 1928.

Q. Then what you say applied prior to 1928?

A. Yes.

Q. And at that time in 1928 and prior, the only large chains you remember were National Tea and Red Owl?

A. There was the Piggly Wiggly but the National Tea bought them. I never sold National Tea then.

Q. So the only chains you did sell were National Tea and Red Owl?

A. Yes.

Q. And these chains, when you say they had an advantage as far as soap from your concern was concerned, had the advantage in saving the jobber's margin?

A. Yes, that is right.

Q. What was that company?

A. Minnesota Soap originally and in 1911 it associated with Haskins Bros. Company.

Q. And you were a part owner?

A. Yes, I was a stockholder.

Mr. Doherty: That is all.

Re-direct examination.

By Mr. Orfield:

Q. What was the usual jobber's margin in selling soap? [fol. 707] You stated in quantities, taking $4.00 as a basis, you would give 10% discount in quantities and in addition a 12½% a box, bringing the price you would sell to the chains for, to about $3.47½ per box?

A. Yes.

Q. Suppose that a jobber would sell the same soap to an independent retailer. What price would he get?

A. He had our list to go by, single box $4.00, five boxes, $3.95, ten boxes, $3.90 and 25 boxes, $3.85. If he wanted to cut his price we didn't care. It was up to him. He had to carry and deliver it.

Q. Do you know whether that policy in the sale of soap is still in force?

A. I couldn't say.

Q. Do you know whether it was generally in force as to other manufacturers while you were in business?

A. We all worked on the same basis.

Q. Was that an agreement between you and the others?

A. No agreement whatever.

Q. But as a matter of fact?

A. Yes, that was the way soap was sold.

Mr. Orfield: That is all.

Joseph Strong, sworn on behalf of defendant, testified.

Examined by Mr. Orfield:

Q. What is your name?

A. Joseph Strong.

[fol. 708] Q. What line of business are you engaged in?

A. Millinery.

Q. How long have you been in the millinery business?

A. Over forty years.

Q. Will you state the experience you have had in the millinery business?

A. Manufacturing, jobbing and retail.

Q. Have you been connected with any millinery chain?

A. I have.

Q. Which one?

A. Strong Warner.

Q. How long were you with that chain?

A. About 35 years.

Q. What was the size of that chain when you were first connected with it?

A. One retail store.

Q. And what was the size of it when you severed your connection with it?

A. Oh, we had probably 60, 70 stores.

Q. In what way were you connected with that millinery chain, what office did you hold?

A. President and manager.

Q. Was that during the entire period?

A. Yes.

Q. Did you say thirty years?

A. More than thirty years.

Q. As President and manager of this millinery chain, did you become thoroughly familiar with the various phases of the business?

A. Yes.

[fol. 709] Q. Did you do the buying for the firm?

A. Yes.

Q. In connection with such buying, did you find that you could effect a saving by buying in large quantities?

A. Yes, in some things.

Q. In what things?

A. Hats, job lots.

Q. What is the amount of saving you could effect in buying in large quantities?

A. It is very hard to say because there is no staple price on millinery.

Q. Give an illustration from your experience of the saving connected with a large purchase?

A. I don't understand the question.

Q. Do you recall any time when you purchased a large quantity?

A. The year of the John Wanamaker sale. Wanamaker put on a sale of twenty million dollars of merchandise at 20% off and I thought I would do the same thing and during the sale manufacturers came here from St. Louis, Chicago, New York and Milwaukee to watch this sale and I did make one large purchase during that sale in which I proved to the manufacturers their hats could not be sold at the regular price on account of the conditions and purchased 2,000 dozen of one hat for $21.00 a dozen which was $30.00 originally, but in fairness to the question and answer, it was the usual thing at that time of the year to buy goods for much less money if you could use a quantity of it.

[fol. 710] Q. Were you able to make that purchase because you had a large number of stores?

A. Yes.

Q. If you had only one store could you have purchased the same goods?

A. If the volume of business was big enough I could.

Q. Would it be true that the individual store would have had to pay $30.00 a dozen for the hats you paid $21.00 for?

A. Unless they bought a large quantity they would have.

Q. How many outlets did you have at that time?

A. 107.

Q. Did you find in connection with your quantity buying that you could get progressively greater discounts as you increased the quantity?

A. We didn't call them discounts but cut prices, it was a matter of bargaining.

Q. Could you get progressively better bargains if you increased the quantity?

A. If you were smart enough you could.

Q. Are you now operating a millinery store?

A. Yes.

Q. Have you more than one store.

A. No.

Q. In purchasing for your store, can you get quantity discounts corresponding in amount to the quantity discounts you could get when you were operating the 107 stores?

Mr. Doherty: Objected to as assuming something not in evidence.

[fol. 711] Mr. Orfield: Change the word to reductions.

(Question read.)

A. No.

Q. In purchasing for your chain millinery stores, did you purchase for cash or credit?

A. Generally on credit, seldom for cash.

Q. Was there a discount for cash?

A. Yes.

Q. What was your experience with reference to the getting of credit? Were you able to get credit from the banks in sufficient amounts?

A. Yes.

Q. Do you recall what percent you had to pay for money in borrowing in large quantities?

A. From four to six percent.

Q. Suppose you had borrowed money in very much smaller quantities, what would the rate have been comparatively?

A. It might have been one percent less.

Adjourn until 10 A. M. Monday.

Q. You testified Mr. Strong, as manager of a millinery chain of some 100 stores you had experience in getting money from the banks in large quantities. Have you also had experience in getting money from the banks in smaller quantities?

A. Yes.

Q. What has your experience been as to the rate you had *you* pay when you were manager of the millinery chain and the rates you have to pay now as manager of an independent store?

Mr. Doherty: Objected to as immaterial.

Q. We will limit the question to a comparison of the rates you had to pay when you operated the millinery chain [fol. 712] and the rates you had to pay immediately afterward?

A. I didn't borrow money afterward.

Q. Did you have occasion to learn what the rates were at that time?

A. No.

Q. As operator of this large millinery chain, did your company manufacture any of its goods?

A. Yes.

Q. Will you state approximately what percent of its goods it did manufacture?

A. You mean make hats or make material?

Q. We will confine it to the manufacture of hats?

A. Perhaps 40%.

Q. In connection with such manufacturing, did you learn whether it was more economical to manufacture hats than to buy them?

A. It was and it was not. When you buy a quantity it was, but when you bought a small quantity it was not. For a large quantity it was economy to manufacture because we imported the material ourselves.

Q. Did you as a matter of fact effect a considerable saving by reason of your manufacture of hats?

A. Not as a chain but as a business, and I am doing the same thing today.

Q. You made a profit then on the manufacturing end of your business?

A. Temporarily, yes, absolutely, but at the end of the season we did not. We carried over material.

[fol. 713] Q. Did you own your millinery store outlets or lease them?

A. We leased everything.

Q. What was the basis on which you determined how much rental you could pay for a given millinery store outlet?

A. The volume of the business.

Q. Did you find in connection with your business there was a fairly definite relation between the volume of business at a given outlet and the net profit at that outlet?

A. It is hard to answer that, it varied.

Q. Did you find a relation between the volume of business done at a given outlet and the rate of profit according to unit of sale in such outlet?

A. I cannot answer yes or no. When business went back we went back with it and when we took a department in a store which was progressing our rental was fixed so we progressed with it.

Q. I understand there were other factors entering, making it necessary to qualify your answer, but take it as a whole, looking at your entire experience in the millinery business, did you find on an average you had a better or lower rate of net profit?

Mr. Doherty: I think rate of net profit should be explained.

Q. As applied to volume. I ask you whether from your entire experience you found there was any general relation between the volume of business done and the rate of net profit per unit of sale?

A. It is hard to answer that question. I am under oath. We have good years and bad years with the same number [fol. 714] of stores and same volume of business. It is not like the bread business, because some years we would do much more, seasonable weather like this season, the worst I have ever seen, so it is hard to answer yes or no.

Q. I am not asking with reference to the total sales of your chain whether you had a betted rate of profit, but whether you found a difference between the average rate of net profit for the large stores as compared to the average rate of net profit for the small stores?

A. If I may go into detail. For instance, we made $7,000 in a little town in South Dakota one year and lost $15,000 in Indianapolis where we were doing a $100,00 business.

The stores were up and down, but for your benefit, I made the greatest percent of profit when we were doing a smaller business.

Q. Is it true generally speaking those were the more prosperous years for the nation as a whole?

A. The years went up and down with the weather conditions. The best showing I ever had was 1927, the money panic year, but it was the weather conditions more than anything else which made the difference.

Mr. Orfield: That is all.

Cross-examination.

by Mr. Doherty:

Q. Where were you born?

A. Ireland.

Q. How long have you been here?

[fol. 715] A. Over 50 years.

Q. You are a citizen I assume?

A. I am.

Q. When did you start in business?

A. 1892.

Q. Was that in the millinery business?

A. Yes.

Q. Is that the only line you have ever been in?

A. It is.

Q. Any testimony you are giving is intended to be confined to the millinery business?

A. Yes, it is.

Q. When did you begin to go into the chain store business?

A. It was after 1900.

Q. When did your chain store system reach its maximum development?

A. About 1920.

Q. You then had 115 stores?

A. 107 was the most.

Q. How widely were the stores distributed?

A. From the Atlantic to the Pacific.

Q. During the time you were extending your system of chain stores, what did you find in reference to the ratio of profit, meaning the percent of net profit in terms of gross sales? What did you find as to whether or not that ratio increased, decreased or remained constant as you added more stores to your chain?

A. It was very hard to determine, because we had 21 men on the road, selling them wholesale and we never divided our business.

[fol. 716] Q. What about the ratio of expense as the number of stores increased, whether it was up or down?

A. It was up. As we increased rapidly, it was up.

Q. What would you say from your experience with reference to the relation, if any, between the volume of business in the entire chain and the ratio of net profit on the gross sales?

A. There cannot be any relation. One year we made a lot of money when it wasn't a good year.

Q. What is the fact with reference to the comparison between individual stores? Did the biggest stores always have the largest ratio of profit?

A. The big store in any town has it over a chain store. If you go through the State of Minnesota, in almost every town and village you find one big independent store which has the advantage in competition with the chain store in the same town. When I traveled, when I went into a town, I went to the big store and the big store got the best price for the hat whether or not it was a chain.

Q. In your line of business, did you find it was common to find the independent stores larger than the chain store in the same place?

A. It was.

Q. As to your own individual retail stores, did you find it true that the largest store always made the largest ratio of net profit?

A. Yes.

Q. Would that be true regardless of where the stores were located, I mean taking a large store in one section of the country and compare that with a small store in another [fol. 717] place, would you always find your largest store making the largest percent of profit?

A. Yes, it would depend on the location.

Q. Didn't you have smaller stores in some places make more money than the larger store?

A. I didn't answer your question right.

Q. What was your experience with reference to your own stores?

A. Our stores were always second, never first where there was an independent store.

Q. Comparing your own large stores with your smaller stores, did the largest stores always make the largest per-cent of profit?

A. Not always.

Q. Was there a rule about that?

A. No, depending on the rent and the climate and on the management.

Q. And other factors?

A. Transportation charges, sending out supervisors to look over the place and it would depend on the location and expense.

Q. What is the fact with reference to whether you could take any one store and compare its ratio of profit from one year to another? Would that be variable or constant?

A. Variable.

Q. And would that be true whether the store was large or small, taking your entire system of stores and compare one store from year to year. Would that be variable or constant?

A. Quite variable.

[fol. 718] Q. You say your manufactures were profitable temporarily. Explain that?

A. If we had a good season on that merchandise, which we bought or manufactured months ahead, it was a profitable season and if not a good season, we would have to give the goods away at the end of the season because they would be no good that year.

Q. And you would take a loss for the season?

A. Yes.

Q. And the larger the stock the larger the loss?

A. Yes.

Q. You always leased your stores?

A. Yes.

Q. Did you ever take a loss on leases when you closed stores before the lease expired?

A. We did, plenty of them.

Q. I understand that the buying aspect of your business is somewhat peculiar. You said the other day there were not any regular discounts, it was a matter of bargaining?

A. There was a regular cash discount whether you bought a whole lot or little, but there were cut prices which is a discount.

Q. Was there any irregularity about those?

A. No.

Q. The amount of what you would get in the way of a cut price would depend on a number of factors?

A. It would depend on the quantity bought at that particular minute and the season, bad or towards the end of the season.

[fol. 719] Q. Would the personal factor enter into that at all?

A. No.

Q. I thought you said the other day you could make some saving if you were smart enough, I mean the personality of the buyer, relationship between buyer and seller?

A. Oh, absolutely.

Q. This 2,000 dozen of hats which you say you bought at a low price, what season of the year did you buy those?

A. In June.

Q. You bought them from whom?

A. Lepman Bros. of Chicago.

Q. Are they manufacturers?

A. Yes.

Q. Was this bought as a wholesale purchase?

A. Yes.

Q. Between manufacturers and wholesalers, what is the usual buying season for spring?

A. In those days you commenced to buy in November. Now you buy from January to May. In those days it was November to May.

Q. And you say you bought this lot in June.

A. Yes.

Q. Then that would be the tag end of the buying season?

A. Yes.

Q. Was this a job lot of left-overs?

A. No, Lepmans were up here and I made them an offer of $27 for 500, $24 for 1,000 and $21 for 2,000 dozen. They went home and consulted with each other and I presume [fol. 720] employed additional help to get the material out.

Q. Wasn't the fact it was the end of the buying season a very large factor in making that purchase?

A. Yes.

Q. Is there any difference between the buying advantage

of a single store and a chain store if the volume of the purchase is the same in both cases?

A. Sometimes the single store buys cheaper than a small chain, because the manufacturer has to distribute to eight or ten places, whereas if one store buys it is all sent in one invoice, one postage stamp.

Q. If you buy a certain number of hats from a manufacturer, you buy for distribution from the manufacturer to the various stores?

A. Yes.

Q. They don't go through your headquarters?

A. They did to ours.

Q. I mean on the finished product on which you have no work to do, in that case does the manufacturer ship to your individual retail stores?

A. When I bought they shipped them to our store and that is why I sometimes could bargain. If they had to distribute them, they would charge more.

Q. That would be more expensive?

A. That was an added cost to the manufacturer naturally.

Q. Are there any manufacturers or were there any manufacturers when you were operating your chain stores, who specialized in sales to independents and would not sell to chains?

[fol. 721] A. No, there were not many chains in my time.

Q. Do you know what the fact is now, whether there are some manufacturers who don't sell to chains at all?

A. There are a few but not very many.

Q. And they sell exclusively to independents?

A. Yes.

Mr. Doherty: That is all.

Redirect examination.

By Mr. Orfield:

Q. You stated with reference to certain items, the large individual millinery store can purchase more cheaply than the chain. What would be the experience where you as the purchaser for 107 stores, purchased a certain line of goods as to the price you would have to pay as compared to the average price which 107 independent stores doing the same volume of business would have to pay?

A. We bought as wholesalers and not as retailers at any time, because we were wholesalers.

Q. And as such wholesalers did you get on the average a lower price than the retail independent could get?

A. Absolutely, because we sold the retail independent.

Q. Then wasn't it true you got a wholesale price and your competing independents a jobbers price?

A. We were wholesalers and continued as such as long as I was there. Our retail stores paid as much as the average independent retailer because we sold them at a profit for the expense of our business.

[fol. 722] Q. Did you sometimes sell as a wholesaler to independent stores who competed with you as retailers?

A. We did, very much so, especially in Minneapolis.

Recross-examination.

By Mr. Doherty:

Q. I understand all the time you were operating your chain of retail stores, you were also selling independent retail stores from your wholesale business?

A. Yes.

Mr. Doherty: That is all.

Mr. Orfield: I want to introduce from Plaintiff's Exhibit B, which is the Census of Retail Distribution, page 8, all of that page, commencing with the heading at the top reading—"Standard Summary of Retail Facts," except the foot note at the bottom reading—(For analysis of sales by commodities, see Table 15).

The Court: Received.

Mr. Orfield: I want to offer in evidence from Exhibit C, page 1-C beginning with the heading, "Chains Gain in Five Kinds of Business," down to but not including the heading, "Department Stores".

The Court: Received.

Mr. Orfield: State offers in evidence from State's Exhibit 24, Senate document #30, a document of the 77th Congress, entitled "Source of Chain Store Merchandise," the letter of [fol. 723] transmittal of C. W. Hunt, chairman of Federal Trade Commission on page seven, also pages one, two, three and four and the first three paragraphs of page five.

The Court: Received.

Mr. Orfield: From Exhibit L, the State offers in evidence

the last five lines on page seven, commencing with the words, "Section 5," and Table 2 on page eight, commencing with the words "Table 2," and ending with and including foot note three immediately below the table.

The Court: Received.

Mr. Orfield: State also offers in evidence from Exhibit L, Roman numbered pages 11, 12, 13, 14, 15, 16 and 17 inclusive.

The Court: Received.

Mr. Orfield: State offers in evidence from Exhibit D, which is Volume One, Retail Distribution, United States Summary, 1933, the last two paragraphs on page 69, entitled "Payroll," and "Reported Expenses."

The Court: Received.

Mr. Orfield: State also offers in evidence from Exhibit D, the last paragraph at the bottom of page 68, entitled "Full-time Employees."

The Court: Received.

Mr. Orfield: State offers in evidence from Exhibit N, which is Fifteenth Census of the U. S. Census of Distribution, Retail Chains, all of pages 7, 8, 9, 10 and 11.

The Court: Received.

Mr. Orfield: Also from Exhibit N, State offers in evidence on page 12, the table entitled "Chain Sales Ratio by States," [fol. 724] the column heading immediately below reading, "Division and State," and the five column headings immediately to the right of said column heading and the word "Minnesota" some distance below and the figures immediately to the right running across the page.

The Court: Received.

L. E. Streater, sworn on behalf of defendant, testified.

Examined by Mr. Orfield:

Q. What is your name?

A. L. E. Streater.

Q. What line of business are you in?

A. Retail lumber business.

Q. How long have you been engaged in that business?

A. I started as a boy working for other people in 1897, helped in the yard, later yard manager, then traffic superintendent of a small line yard company, later on assistant

general manager and then general manager of 75 lumber yards and in 1917, I started a business of my own and in 1924 I quit working for other people and devoted my time to my own business.

Q. In your long experience in the lumber business, have you been familiar with all phases of the business?

A. Yes.

Q. Do you know what is the average rate of turnover in the lumber business in Minneapolis?

Mr. Doherty: I cannot see the purpose of this testimony. [fol. 725] This business is exempt under the law.

Mr. Orfield: It is my understanding that the plaintiff has made a point of the law being invalid because of certain exemptions. If exemptions are justified, then that classification is permissible, otherwise not.

Mr. Doherty: Then I have no objection.

(Question read) A. I can refer only to my own experience in Minneapolis. My yard line business is in the country but we have one yard in Minneapolis.

Q. State the rate of turnover throughout the state in your own business.

A. I would have to qualify it. Do you mean total investment or merchandise?

Q. Explain what you understand by turnover?

A. Well, turnover is how often we turn over our total investment. During the past five years, the depression years, our turnover has been less than one turnover. In normal times our turnover runs from one and one-half to one and three-quarters turnover of investment. The turnover of merchandise is larger than that of course.

Q. What would it be based on?

A. The past year our turnover of merchandise was approximately two turnovers.

Q. And over a longer period of years what is the turnover?

A. Not to exceed three turnovers, that would be liberal.

Q. Do you know from your experience as to speed of turnover, what is the common experience of lumber turnovers throughout the state?

[fol. 726] A. It is the experience I have had with several hundred lumber yards under my management. I would say my turnover is average.

Q. What portion of your entire investment is real estate?

A. Approximately 25% is real estate and buildings.

Q. Is it your practice to extend credit in connection with your business?

A. Yes.

Q. Can you state what per cent of your sales are credit sales?

A. I would say fully 95%.

Q. Do you know the total of your sales during 1935?

A. Yes.

Q. Will you state, please.

A. Our sales last year were $293,827.29.

Q. Will you state the total of your outstanding indebtedness at the end of the year?

A. $128,942.74.

Q. Will you state the extent of the losses you have suffered by reason of the giving of credit?

Mr. Doherty: Objected to. This testimony is entirely immaterial.

The Court: It is your position, Mr. Doherty, that you are attacking the act on the ground of exemptions also?

Mr. Doherty: Yes, but the information brought out by this testimony could not possibly furnish a basis for an exemption from taxation, even if this were all true.

[fol. 727] The Court: I think I will accept this on the state's theory.

Mr. Doherty: Then may it be understood my objection extends to all testimony of a similar character.

A. From 1930 to 1935, inclusive, our charge-off was $15,819.08, which we will carry in hopes of recovering approximately $10,000, which are extremely doubtful accounts.

Q. Do I understand you suffered a definite loss by reason of your credit business in the last six years over $15,000?

A. Yes.

Q. And there may be additional loss?

A. Yes, there is sure to be.

Q. Do you extend credit to customers in other ways than in connection with the purchases of building material?

A. Yes, we do in addition to the figures I have given you.

Q. State what that is?

A. In 1929, ten retail lumber companies organized a Lumbermen's Finance Corporation in Minnesota for the

purpose of extending building credit and our company was among them and they have done an extensive loan business to home builders in the last six years.

Q. Is that in connection with the building of new homes?

A. Yes, long-time payments.

Q. Does that phase of your business make possible the building of new homes?

[fol. 728] A. Yes, it is absolutely necessary. Recently there have been facilities for making loans, but we did this in the country towns which it was not possible to do before.

Q. What rate of interest do you get?

A. Six and one-half per cent monthly pay-off loans without commission.

Q. How does that compare with the Federal loans?

A. It appears to be larger, but it is actually less than the five per cent loans which has the insurance features and monthly charge and commission for writing the loan. We make some F. H. A. loans for outside firms which do not belong to our corporation.

Q. At what time of the year are your inventories of merchandise the highest?

A. I would say the highest point probably is April first. This year there was a delayed spring and it probably is that our highest peak is at this time, but ordinarily it would be from the first of April to the first of May.

Q. Do you have the figures as to the amount of personal property taxes paid by you in 1935 in connection with your business?

A. No.

Q. Do you know approximately what that amount is?

A. You mean for all the yards?

Q. I was thinking of the entire business of the company.

A. Eleven yards. Well, it would average about $300 [fol. 729] apiece for the personal property tax, probably three or $400 more for the real estate tax, so it would average about $500 a yard. I don't have the figures with me, however.

Q. From your experience in the business, do you know whether your experience with reference to the amount of real estate and personal property taxes paid, is typical of the lumber business throughout the state?

A. I think it is about the average.

Mr. Orfield: That is all.

Cross-examination.

By Mr. Doherty:

Q. Under the real estate investments which you say is 25% of your total investment, what is included?

A. Land and buildings.

Q. The land and buildings on which your yards are operated?

A. Yes.

Q. Is that all?

A. That is all that makes real estate.

Q. Do you own all of the land and buildings in all your yards?

A. Not one yard, that is leased.

Q. How many yards did you say you had?

A. Eleven.

Q. Do you know what the fact is with respect to other chain or line yards, where more than two yards are operated under one ownership or control? It is the same thing as we speak of as chains.

[fol. 730] A. We never call them chains, we say line yards.

Q. You mean what?

A. More than one yard.

Q. Under a single ownership operation or control?

A. Yes.

Q. Do you know what the fact is with respect to other line yards, whether they lease a portion of their land and buildings on which they operate their yards?

A. Yes, I do. I can give you the experience of companies I have operated myself. There was one company of 75 yards and we owned all of them and another company of forty yards and we owned all of them, and another company I am affiliated with my brother in 63 yards and own them all. It is just occasionally that the yards are leased, I don't think it is one per cent.

Q. You are referring to other companies as well as your own?

A. Yes, I doubt if more than one per cent are leased.

Q. What is the fact in the large cities?

A. In the large cities there is a lot of leased land, considerable land that cannot be bought.

Q. Would you say in the large cities, the majority of the yards are leased?

A. No, I would not say the majority because the line yards don't operate in the cities to any extent. There are only two, three line yards in Minneapolis outside of 50 or more yards. Minneapolis and St. Paul have not more than [fol. 731] five line yards here and they were put in in recent years.

Q. As to them, a large per cent are operated on leased yards?

A. No, I would not say the majority, two-thirds own them.

Q. The building usually used in the lumber yard is not a large item in the investment?

A. It is the largest part of the real estate.

Q. When you speak of buildings, what do you mean?

A. Lumber sheds, cement sheds, office building.

Q. They usually have small office buildings?

A. No, they have large office buildings usually. We have very good office buildings. We have an office building at Minnetonka which cost $6500 for the building alone.

Q. Is that for the operation of one yard or a central office?

A. No, it is just one yard.

Q. Have you any figures as to what per cent of the lumber business throughout Minnesota is done by line yards?

A. I have no actual figures.

Q. What would be your judgment on that?

A. Well, the majority of the yards in Minnesota; I would say probably three-fourths of the yards in Minnesota are owned by line yard companies. That prevails largely in the Northwest territory.

Q. I was talking about Minnesota?

A. I would say 75%.

[fol. 732] Q. You mean 75% of the business outside the cities or included?

A. Cities outside the cities. Minneapolis, St. Paul and Duluth would do as much business as the rest of the state ordinarily and they are largely owned independents.

Q. The line yards which operate outside of the large cities, which you say would do 75% of the business, are they national or Minnesota line yards?

A. There are no national line yards, they are Minnesota corporations. Most of them started here and some are the out-growth of our saw mill days and when saw mill opera-

tion was discontinued, considerable of that money was left here and invested in the retail lumber business.

Q. Have they any connection with lumber yards in other lumber yards or wholesalers in other states?

A. Several line yard companies own yards across the state lines. Most of the yards are in Minnesota. I think a few are in Iowa or the Dakotas and some have yards in all the states, but my yards are all in the state of Minnesota.

Q. What states do you mean?

A. Dakotas, Iowa and Minnesota and a few in Wisconsin, but not very many are owned by Minnesota Corporations, it may not exceed 25 or 30.

Q. What is the largest line yard in Minnesota in point of number of units?

A. I believe it is the Fullerton Lumber Company.

[fol. 733] Q. About how many units does it have in Minnesota?

A. I cannot say in Minnesota, but they are reputed to have about 125 lumber yards altogether, but they began operations in Iowa and South Dakota quite heavily. They have more yards outside the state than in Minnesota.

Q. What would be the next largest that you can recall?

A. I never examined their books but just by reputation the Central Lumber Company of Minneapolis, which is partly owned by Shevlin Carpenter Company who have a big line here.

Q. About how many in Minnesota?

A. They probably have 35 or 50 in Minnesota.

Q. Anywhere else?

A. Yes, North and South Dakota.

Q. Any other state?

A. I am not sure.

Q. Who would be the next in point of size?

A. The J. F. Anderson Company. In point of size perhaps Thompson Yards are fully as large as any I have named. They have headquarters in St. Paul. The numbers don't always mean the largest company, some have smaller yards.

Q. How many units have the Thompson Yards in Minnesota?

A. They had about 200 but they cut them down to something over 100 now and in the State of Minnesota they probably have 20 or 25 yards, but they are in North and South Dakota and Iowa.

Q. They have yards in the large cities?

[fol. 784] A. No, they sold their yards in the large cities.

Q. Recently?

A. Eight, ten years ago. They had a yard in the midway district and they sold that and they had a big yard at Sioux City which I believe they have disposed of.

Q. Have you any figures as to the number of line yard companies operating in Minnesota?

A. I haven't, but the figures are available.

Q. Could you give us some approximation on that?

A. There is a man in this room who could testify more correctly than I could on that. I wouldn't want to guess without figuring it up.

Q. Could you give us an estimate of the average number of units in the yards in Minnesota?

A. They run from two to three yards to probably 20 to 25 yards, might be considered the average.

Q. Do you deal in anything except lumber and building material?

A. Yes, coal.

Q. Anything else?

A. Builders' hardware and building material, paints and miscellaneous farm supplies. The situation is different almost every place.

Q. And would everything be included in lumber, building material and coal? Do you sell any other fuel?

A. A very little wood.

Q. Would that cover everything you sell?

A. The bulk of our business is building material and the rest would be fuel.

[fol. 735] Q. Roughly speaking, what per cent would be fuel?

A. My yards would not be typical of some of the other yards. I don't handle as much fuel as some of the others do in proportion. I think 25% of the lumber business would be fuel.

Q. When you speak of selling on credit, what length of time do you refer to?

A. We have a few customers who pay their bills at the end of the month, very few. The average building operations requires from three to six months' credit and sometimes it runs into two, three years and then we make specific loans up to ten, twelve, fifteen years.

Q. When you spoke of your loss from 1930 to 1935 being $15,000 and then you mentioned the additional sum of $10,000, was the $10,000 included in the $15,000?

A. No, we always have losses that we hope to salvage on.

Q. Then you have a $15,000 loss?

A. Yes, $15,819.08.

Q. And another $10,000 is doubtful?

A. I estimated there would be $10,000 more to be charged off.

Q. This loan company you speak of is a separate corporation?

A. Yes, but ye guaranty all the loans.

Q. You guaranty the loans to the corporation?

A. Yes, so the corporation has no losses and if houses are lost, we have to take them back.

Q. Do you take security?

[fol. 736] A. In default of payment we have to take them back.

Q. But all those loans are secured loans?

A. Yes, they are secured.

Mr. Doherty: That is all.

O. C. Lance, sworn on behalf of defendant, testified:

Examined by Mr. Orfield:

Q. Will you state your name?

A. O. C. Lance.

Q. In what line of business are you engaged?

A. Secretary of Northwest Lumbermen's Association.

Q. Does that include both independents and line yards?

A. Yes.

Q. How long have you been such secretary?

A. About six and one-half years.

Q. State what your duties are.

A. We do service work for the lumber yards, traffic, architectural, tax service, merchandising, advertising and selling assistance.

Q. Does your work bring you into contact with the various yards located throughout the state?

A. Yes.

Q. Do you have occasion to inspect the stock in these yards?

A. Yes.

Q. Do you have occasion to examine the books?

A. I am called upon to do so.

Q. And are you called upon to do so quite frequently?

[fol. 737] A. Yes.

Q. Has your work as such secretary made you quite thoroughly acquainted with the various phases of the retail lumber industry in Minnesota?

A. Yes.

Q. What are the various kinds of material sold by lumber yards?

A. Lumber, fuel in most of the yards outside of the Twin Cities, cement, lime, plaster, insulation and roofing.

Q. Taking the series as a whole including all these various lines, will you state the approximate rate of turnover in an average lumber yard per year?

A. You mean based on the merchandise, stock carried?

A. Yes.

A. Probably two to two and one-half turn-overs a year would be the average.

Q. Is the business of lumber yards in part a credit business?

A. Yes.

Q. To what extent?

A. I would say more than 90% of their sales.

Q. What loss, would you say if any, is suffered in connection with the giving of this credit, percentage of loss?

A. It would depend on the general economic conditions.

Q. Take the economic conditions such as we have had in the six and one-half years you have been secretary.

[fol. 738] A. Well, I would say between two to two and one-half per cent of the gross sales would be represented by credit losses.

Q. At what time of the year do you find the merchandise inventory of lumber yards the highest?

A. In the spring, from April to June first.

Q. How would the inventory on May first compare with the inventory at that time of the year when the inventory is the lowest?

A. On the average at least two, three times as much.

Q. Outside of the three large cities, do the lumber yards own the real estate on which they operate or do they lease?

A. Practically all of them own their real estate.

Q. Are you familiar with any of the leases in cases where they lease?

A. We have had some in our traffic department for inspection.

Q. Do you know whether in such cases the lessee, the lumber yard, pays the taxes on the leased property as a part of the consideration of that lease?

A. Yes, in most cases he does. All the ones I am familiar with he does.

Q. When a line yard wishes to acquire additional outlet, does it generally do so by purchasing or by opening a competing yard?

A. I would say almost entirely by purchase of another yard.

Q. Do they ever go into a new town with the idea of [fol. 739] driving out the independent lumber yard there?

Mr. Doherty: Objected to as calling for a conclusion.

The Court: I think it is.

Q. In your long experience in connection with your duties as secretary, do you know of any cases in which line lumber yards have gone into a town and driven an independent out of business?

Mr. Doherty: Objected to as calling for a conclusion, speculative.

The Court: Whether or not in his experience he came in contact with any of these yards going out and if he knows the reason.

Q. Have you during your experience as secretary noticed any cases in which independent lumber yards have gone out of business?

A. Yes, sir, and line yard companies also.

Q. In any of these cases, was the cause of the closing up of the independent, the competition of the line yard?

Mr. Doherty: Objected to as calling for a conclusion, and no foundation laid.

The Court: Ask him whether or not he knows.

Q. Do you know in any of these cases which you have mentioned where independent yards have gone out of business, what was the cause of the independent going out of business?

A. I know in some instances.

Q. In any of those instances, was the cause the competition of the line yard?

A. Not in any case I know about.

[fol. 740] Q. Are you familiar with the term 'loss-leader' as used in the chain store business?

A. Yes.

Q. Does the retail lumber yard use that policy in connection with its business?

A. Not as a rule.

Q. Do retail yards put on sales at cut-rate prices.

A. Not as a rule.

Q. In purchasing lumber for re-sale, what is the usual unit in purchasing?.

A. A carload.

Q. Would there be a difference in price between the carload purchases of the independent lumber dealer and of the line yard?

A. No.

Q. Will you state in what manner a retail yard warehouses the merchandise it sells?

A. They have their own warehouse on their own property in connection with the lumber yard and they store it there.

Q. Is there anything about the nature of the business which makes it essential for them to have their own warehouse?

A. The principal thing is that the heavy commodities must be bought in carload quantities, so naturally a part of it must be stored.

Q. And in the nature of things must be stored on the premises from which it is sold?

A. Yes.

Q. Why couldn't the merchandise of the lumber yard be warehoused at some other point, just as well as the merchandise of the ordinary store?

[fol. 741] A. In the heavier commodities the expense would be prohibitive in bringing it in in less than carload quantities.

Q. Then do I understand the independent as well as the line yards maintains its own warehouse?

A. Yes.

Q. In testifying with reference to the warehousing were you testifying with reference to fuel as well as building material?

A. Yes, lumber, cement, fuel.

Q. Would the purchase unit be the carload of fuel as well as lumber?

A. Yes.

Q. And would the same thing be true of other items you have mentioned?

A. Yes, plaster, cement, tile, lumber, brick and fuel.

Q. And the same warehousing feature applies to each of them?

A. Yes.

Q. Does the same principle as to carload lot purchasing apply to each of these items?

A. Correct.

Mr. Orfield: That is all.

Cross-examination.

By Mr. Doherty:

Q. Tell us a little more fully about the service rendered by your organization. What are the different elements of that service?

[fol. 742] A. In the traffic department we render traffic service, auditing freight bills and collecting claims and route shipments and expedite deliveries, assist the lumber people generally with the transportation problems.

Q. Anything else?

A. We have an architectural service department for the assistance in planning homes and tax service.

Q. What is that?

A. We assist them the best we can in solving any tax problems which may arise, like making out returns, when and how they are to be made and how to figure the taxes.

Q. How to minimize the tax payments in so far as it can legitimately be done?

A. Yes.

Q. Anything else?

A. We have a merchandising service.

Q. What is the nature of it?

A. Suggestions as to selling items which have proven successful in other lumber yards, interchange of ideas in regard to merchandise items, write advertising service in some instances where it is requested, telling the members what has been the best method in advertising certain com-

modities and what time of the year to advertise certain commodities.

Q. Anything else?

A. Yes, we perform some legislative service for some members when the legislature and congress is in session. We read all the bills and keep them posted on what the bills provide for.

[fol. 743] Q. Keep on the watch for legislation which might be injurious to the industry?

A. Yes.

Q. And exert every proper effort and means to prevent adverse legislation?

A. Yes.

Q. Do you have people in the organization who make a study of these things?

A. Some are in the organization and some are specialists which we have obtained from outside for that purpose. In our office we have our own architect and draftsman and outside we retain our counsel and attorneys.

Q. What about the merchandising?

A. We do that mostly ourselves by the collecting of information by bulletins and passing the information out to the men by other bulletins.

Q. You have men in your organization whose duty it is to make a study of such methods?

A. Yes.

Q. How old is your organization?

A. 46 years old.

Q. It has been operating in Minnesota during all that time?

A. Yes.

Q. Can you tell us approximately what the average per cent, if there is such a figure available, of the different lumber concerns in your organization, in lumber and building mterial and what per cent in fuel?

A. Approximately I can. Approximately 90% of our members outside of the three largest cities in the state are [fol. 744] merchandisers of fuel as well as lumber and building material.

Q. And have you any figures on what per cent of lumber and what per cent of building material they sell?

A. We have collected some statistics on that. I would say fuel would represent from 25 to 35% of their gross sales.

Q. On the credit loss, which you say runs from two to two and one-half per cent of sales, I suppose that varies from year to year?

A. Yes.

Q. Does it also vary between different concerns?

A. Yes, and in different localities.

Q. What time of the year is the low point from the standpoint of inventory?

A. Between the 15th of December and 10th of January.

Q. Is that because the lumber business is at a very low ebb during that period?

A. Yes.

Q. It does not require much merchandise to take care of the demand?

A. No.

Q. You say as a rule, the general rule is that loss-leaders are not used?

A. Yes.

Q. Are there exceptions to that?

A. Some.

Q. You mean among your members and others not members of your association?

[fol. 745] A. Yes.

Q. Does your association embrace most of the lumber dealers in Minnesota?

A. About 85%.

Q. Is there anything in respect to loss-leaders, as used by those who do use them,—is there any particular class of material that is generally used as loss-leaders?

A. It may be anything but there are some who are singled out.

Q. What would those be?

A. The cash and carry yards use cement.

Q. Any other items?

A. Sometimes a low grade of roofing is used.

Q. And there are still other items?

A. Yes, to some extent.

Q. And the same thing applies to the practice of cutting prices. There are exceptions to the rule I suppose?

A. Yes, wherever competition brings it on, you will find some of it.

Q. Both among your members and non-members?

A. Yes.

Q. Do I understand that the carload is the unit of purchase for retail lumber people?

A. In the heavy commodities, lumber is one of them.

Q. And the carload price is the same to everybody?

A. Yes, as a rule.

Q. Is there any difference in price depending on whether [fol. 746] more than a carload is used? Would a dealer who wanted five carloads get a better price than for one carload?

A. In some commodities it is true, but in many commodities it is not true. It is not true in lumber, it is not true in cement and it is not true in fuel.

Q. Would you say in those commodities you have just mentioned that lower prices are never given for volume purchases?

A. I would not say never, but not as a rule.

Q. What are the other heavy commodities on which the same thing is true?

A. Plaster, lime and clay products, building blocks and brick.

Q. Outside of the lumber business, what are the heavy commodity industries? Are there other industries dealing in heavy commodities of the same general nature?

A. I am not so familiar with other industries.

Q. Would the hardware industry be one?

A. I do not know much about it.

Q. Farm machinery and implements?

A. I don't know much about those either.

Mr. Doherty: That is all.

State rests.

E. A. VINCENT, sworn on behalf of plaintiffs in rebuttal, testified:

Examined by Mr. Doherty:

Q. Where do you live?

A. 1985 Laurel Avenue.

[fol. 747] Q. What is your occupation?

A. At the present time I am classified manager of the Minneapolis Journal.

Q. How long have you been with them?

A. All told 30 years.

Q. What was your occupation on and prior to March 1, 1933?

A. I had the food advertising at that time for seven years.

Q. What were you duties?

A. I called on all the retail food outlets, particularly the general offices of the different groups and chains.

Q. Did that include independents as well as chains?

A. Yes.

Q. And the volunteer chains?

A. Yes.

Q. Among others did you call on the National Tea?

A. I did.

Q. For how many years prior to March 1933?

A. For seven years.

Q. Did you know Mr. O. H. Landin of the National Tea?

A. Yes.

Q. Who was the manager of the Minneapolis branch?

A. I did.

Q. Whom did you usually see at the National Tea with reference to their advertising?

A. Mr. Roskey.

[fol. 748] Q. Did you also see Mr. Landin?

A. Occasionally.

Q. Over a period of how many years?

A. The seven years I had contact with that department.

Q. I will ask you whether over that period of seven years, you at any time had any agreement or understanding with Mr. Landin to the effect that your newspaper, the Minneapolis Journal would withhold any news as being unfavorable to chain stores?

A. No, sir.

Q. Did you have any understanding or agreement of any such nature with Mr. Landin?

A. No, sir.

Q. Did you ever make Mr. Landin any promise of that nature?

A. No, sir.

Q. Did you ever have any understanding or agreement that your newspaper would publish anything favorable to the chain stores?

A. No, sir.

Q. Did you have authority to make any such agreement or make any such promise?

A. No, sir.

Q. Did you ever have any understanding or make any promise or agreement that you or your newspaper would do its best to keep out unfavorable news to the chain stores or the National Tea?

A. No, sir, I don't believe there was ever any such statement.

Q. You say you also solicited advertising from the volunteer chains?

[fol. 749] A. Yes.

Q. What are some of the volunteer chains you solicited advertising from?

A. Allied Grocers, Fairway, Twin City Wholesale Grocer, Red and White. There were some which are discontinued at this time. The I. G. A., Right-way, Witts.

Q. Were these all large advertisers?

A. Yes, they were all large advertisers.

Mr. Doherty: That is all.

Cross-examination.

By Mr. Orfield:

Q. Have you ever had any conversation of any kind with Mr. Lindin with reference to the matter of the news policy of the Journal with reference to chain stores?

A. Not that I can recall. Naturally during those years there was a great deal of chain agitation. We might have talked about the radio activity, but we never had any understanding as far as the newspaper is concerned.

Q. Has the Minneapolis Journal ever carried any news unfavorable to chain stores?

A. Yes, considerable.

Q. What news?

A. Well, during the time the Legislature was in session, bills were presented and we would publish a statement of those bills. Naturally the chains did not like that because it brought attention to the fact there was such legislation.

Q. While you have been associated with the Journal, have [fol. 750] you ever observed a single editorial in the Journal unfavorable to chain stores?

A. I don't know that I can recall it off-hand. I wouldn't want to say, but I think there has been, but I wouldn't say definitely that I have.

Q. Have you read the news column of the Journal during the last two weeks?

A. Yes, I would say so.

Q. Has your newspaper carried any news whatsoever as to the progress of this trial?

Mr. Doherty: Objected to as immaterial.

The Court: He may answer.

A. No, I haven't seen it.

Mr. Orfield: That is all.

C. F. GUNDERSON, sworn on behalf of Plaintiffs, in rebuttal, testified.

Examined by Mr. Doherty:

Q. Where do you live?

A. Minneapolis.

Q. What is your business?

A. I work for the Minneapolis Star as advertising salesman.

Q. How long have you been advertising salesman for the Minneapolis Star?

A. It is pretty close to 12 years.

Q. From and prior to March, 1933, were you doing the same kind of work for the Minneapolis Star?

A. Yes.

Q. For how many years?

A. I have done the same kind of work ever since I have been there, in the same position.

[fol. 751] Q. And were you soliciting advertising for any particular lines of business?

A. No.

Q. Did you solicit advertising from the National Tea?

A. Yes.

Q. During all that time?

A. No, I don't know how long exactly but I imagine about eight, nine years.

Q. Up to March, 1933, or now?

A. Up to now.

Q. Did you know O. H. Landin, the manager of the Minneapolis branch of the National Tea?

A. Yes.

Q. Did you have any talks with him during this period?

A. Yes.

Q. Who did you generally talk to with reference to advertising?

A. Mr. Roskey.

Q. Who was he?

A. I think he was advertising manager for this branch.

Q. Did you have some talk with Mr. Landin?

A. Yes.

Q. Did you at any time during that period have any understanding or agreement with or make any promises to Mr. Landin, either expressly or to the effect that your newspaper, the Minneapolis Star would suppress any news unfavorable to the National Tea or the chain stores?

A. No.

[fol. 752] Q. Did you ever have any understanding or agreement or make any promise that your newspaper would publish news favorable to the chain stores or the National Tea?

A. No.

Q. Did you have any authority from your newspaper to make any such promise or agreement or would have any such understanding?

A. No, sir.

Mr. Doherty: That is all.

B. N. Tuttle, sworn on behalf of the plaintiffs, in rebuttal, testified.

Examined by Mr. Doherty:

Q. Where do you live, Mr. Tuttle?

A. Minneapolis.

Q. What is your occupation?

A. I work for the Minneapolis Tribune. I handle the retail food advertising.

Q. How long have you handled the retail food advertising for the Minneapolis Tribune?

A. Six years.

Q. In that connection have you called on the National Tea soliciting advertising?

A. Yes.

Q. During all those years?
A. Yes.
Q. Whom did you usually talk with about advertising?
A. Mr. Hoskey, the advertising manager.
Q. Do you know O. H. Landin?
[fol. 753] A. Yes.
Q. Who was manager of the Minneapolis branch prior to 1933?
A. Yes.
Q. Did you have some talks with him?
A. Occasionally.
Q. At any time during those years, did you have any understanding with Mr. Landin or ever make any promise to him or agreement with him that your paper, the Minneapolis Tribune would withhold or suppress any news favorable to chain stores or the National Tea?
A. No, sir.
Q. Did you have any understanding or agreement or make any promise to that purport or effect?
A. No.
Q. Did you have any understanding ever that you would do the best you could to keep unfavorable news out of the newspaper?
A. No.
Q. Did you ever have any authority from the Minneapolis Tribune to make any such promise or any such understanding or agreement with the National Tea?
A. No.
Q. Or any other chain store?
A. No.
Q. During this time you were soliciting advertising from other retail grocery and meat stores?
A. Yes.
Q. And among them volunteer chains?
[fol. 754] A. Yes.
Q. And a considerable number of them?
A. All of them.
Q. And were they also large advertisers in your paper?
A. They were.
Q. During those years when you were soliciting advertising from the National Tea, were you handling that work exclusively or were there any other solicitors from your paper soliciting advertising from the National Tea?
A. Not at that time.

Q. Not during those years?
A. No.

Mr. Doherty: That is all.

Cross-Examination.

By Mr. Orfield:

Q. Do you know what was the attitude of Frank E. Murphy of the Tribune, the publisher, with reference to news unfavorable to chain stores?
A. No, I do not.
Q. Are you familiar with the fact that in the Patman investigation, it was brought out that Mr. Murphy was definitely friendly and assisted the chain stores in their publicity program?

Mr. Doherty: Objected to as argumentative, speculative, calling for a conclusion and hearsay.
The Court: He may answer yes or no.

Q. Are you familiar with the facts brought out in the Patman investigation in regard to the friendly attitude of F. E. Murphy of the Tribune toward chain stores?

[fol. 755] Mr. Doherty: Objected to as assuming something not in evidence.
The Court: Sustained.

Q. Is it not a fact, Mr. Tuttle, that Mr. Frank E. Murphy of the Tribune took the lead in this state in organizing newspaper publicity in this state in favor of chain stores?
A. No.
Q. You know that is not a fact?
A. I know that is not true.
Mr. Orfield: That is all.

John J. Bosiger, recalled by plaintiffs in rebuttal, testified.

Examined by Mr. Doherty:

Q. Mr. Bosiger, can you give us the figures on the advertising expense of the National Tea Company's entire system of the Delaware Corporation from 1925 down to and including 1934?

A. I can from a memorandum.

Q. Will you give them please?

A. 1925—$26,168.29, 1926—$39,478.57, 1927—$52,498.54, 1928—$105,199.68, 1929—$92,093.16, 1930—$92,912.02, 1931—$100,601.66, 1932—$73,233.78, 1933—$98,306.66 and 1934—$100,767.25.

Q. Do the figures you have given of the advertising expense, Mr. Bosiger, cover anything more than newspaper advertising?

A. The figures cover all types of advertising we do, including streamers, the cost of printing streamers, hand-bills, anything of an advertising nature that we do.

Mr. Doherty: That is all.

[fol. 756] V. N. RASCHKE, sworn on behalf of plaintiffs in rebuttal, testified.

Examined by Mr. Doherty:

Q. What is your occupation?

A. Buyer with the National Tea.

Q. How long have you been buyer?

A. About three years in my present capacity.

Q. What do you buy?

A. Groceries, the dry grocery line.

Q. And does that include flour?

A. Yes.

Q. It has been testified to by Mr. Landin that just before he left the National Tea he made a large purchase of flour from the Washburn Crosby Company at $2.25 per barrel, 5,000 barrels I believe it was. Do you know anything about that flour?

A. Yes.

Q. Was that flour ever used by the National Tea?

A. No, not that particular flour.

Q. What was done about the flour after Mr. Landin left the National Tea?

A. We investigated the grade of flour and found it was not suitable for the needs we wanted it for.

Q. What was done with it?

A. We converted the contract to the grade which was suitable.

Q. At what price?

A. $2.52 a barrel.

Q. Are you familiar with the number of stores Mr. Landin [fol. 757] opened up after he left the National Tea?

A. I am not positive on that, no.

Mr. Doherty: That is all.

ABEL NIELSEN, sworn on behalf of plaintiffs, in rebuttal, testified.

Examined by Mr. Doherty:

Q. You are with the National Tea?

A. Yes.

Q. In what capacity?

A. Sales manager.

Q. Covering what territory?

A. All the territory in this unit.

Q. How long have you been sales manager of the National Tea?

A. About eight years.

Q. During that time have you become familiar with the practice of the National Tea in the purchasing of farm produce used in its business?

A. Yes.

Q. What is the fact as to where the country stores purchased their produce for sale in their stores?

A. Every country store is encouraged to buy their own produce wherever they can through the farmer.

Q. You mean locally?

A. Yes.

Q. You mean during the season when it is available?

A. Yes.

[fol. 758] Q. Has that been generally true during all the time you have been sales manager?

A. Yes, it has.

Q. Do you know what the practice is with reference to the price to be paid by local stores in the purchase of such produce?

A. The stores pay the market price or better, depending on the quality of the goods.

Q. Out of season after the local supply is exhausted, where do the country stores get their farm produce?

A. We ship it to them from Minneapolis.

Q. Where does Minneapolis get its supply?

A. They buy it right in Minneapolis.

Q. From Minnesota farms as far as it is available?

A. Yes.

Q. Does it happen that the supply of the Minnesota farms becomes exhausted, so the company has to go elsewhere during seasons of the year?

A. Yes.

Q. And where are the purchases made then?

A. Well, we buy wherever we can.

Q. Is produce sent out from the Minneapolis warehouse to the country stores, except as to those country stores who order from Minneapolis after they are no longer able to buy in the country?

A. When they are no longer able to buy it in the country, we ship it from here.

Q. During the season when produce is available for your Minneapolis warehouse from the Minnesota farms, how is it bought, how is it handled?

[fol. 759] A. I think Mr. Starks could answer that much better than I could.

Q. When Mr. Landin left the National Tea, he testified he opened certain stores. Are you familiar with the location of those stores?

A. Yes.

Q. Where were they?

A. The only one he has opened since he left the company is at 54th and Lyndale Ave., South. He had two meat markets before he left the company and now has put a complete line of groceries in both of them.

Q. At 54th and Lyndale, what competing stores were already located and doing business there before he started his store there?

A. The National Tea was second from the corner and Piggly Wiggly was about a block away. I think they were operating at that time.

Q. Any other chain stores there?

A. A Red Owl across the street and an independent down about two blocks.

Q. Any other independents around within a block or two of there?

A. About five blocks down there are four, five more grocery stores.

Q. Where are the meat markets located?

A. 50th and Yerxa.

Q. What competition was there?

A. A Warren store and a National Tea.

Q. Any other chains?

A. No, not in that neighborhood.

Q. Any other independents?

[fol. 760] A. One other independent, quite a large one.

Q. And the third location is where?

A. 3306 West 44th Street. He has a market next to our grocery store there and has since put in groceries.

Q. What competition was there?

A. We were about the only one in that neighborhood.

Q. How close is the National Tea store?

A. Right next door.

Q. How long had you been there before Mr. Landin went in?

A. I have been up here eight years and it was before then.

Q. Mr. Landin testified to having opened another store and closing it in six months. Are you familiar with that location?

A. Yes.

Q. What was the situation there in the way of competition?

A. There was a big Red and White and a big C. Thomas and the Atlantic and Pacific had a large store there.

Q. Had the National Tea been operating at that point?

A. Yes, we did in the location where he opened up.

Q. How long were you there?

A. Not quite five years, the lease was for five years but we closed it before the lease ran out.

Q. And then you moved away?

A. Yes.

[for. 761] Q. And Mr. Landin went into the same building which you left?

A. Yes.

Mr. Doherty: That is all.

Cross-examination.

By Mr. Orfield:

Q. What proportion of the fresh vegetables sold in country stores of the National Tea is purchased from local farmers?

A. We buy everything the farmer grows and during the season I would say practically all of it.

Q. Making the year the unit, what would your answer to my question be?

A. I would say 60 to 75% bought locally.

Q. As sales manager did you do the purchasing?

A. No.

Q. Did you buy any of the vegetables yourself?

A. No.

Q. Have you any records to show the proportions to which you have stated as to the purchasing of the country stores?

A. I have no records, but there are records in the office.

Q. When you gave that evidence, you were testifying in a field in which you have no personal experience?

A. Just my personal judgment.

Q. And no written record in the office to show?

A. That I don't know.

Mr. Orfield: That is all.

[fol. 762] J. M. STARKS, sworn on behalf of plaintiffs, in rebuttal, testified.

Examined by Mr. Doherty:

Q. Do you live in Minneapolis?

A. Yes.

Q. What is your occupation?

A. Fruit and vegetable buyer for the National Tea.

Q. How long have you been such buyer?

A. A year ago last August.

Q. In the Minneapolis office?

A. Yes.

Q. You buy for what territory?

A. For the entire territory out of this office.

Q. Of the National Tea of Delaware?

A. Yes.

Q. Who was in that position prior to your time?

A. Mr. Staab.

Q. And he died?

A. Yes, August 13, 1935.

Q. Prior to the time you were purchasing manager at Minneapolis, what was your position?

A. I was in charge of the Duluth division for six years, until November, 1933, and took over the buying job here in August, 1934.

Q. Then you were in charge of the Duluth branch for how long?

A. From 1927 to 1933.

Q. What were your duties up there?

A. I had charge of 34 stores up in Duluth and the outlying districts and bought fruit and vegetables for the entire territory up there.

[fol. 763] Q. During the time you were at Duluth, what was the practice of the National Tea with respect to buying fruits and vegetables for the country stores in your territory?

A. Up there there isn't a great deal of garden products, but what little there was we bought from the farmers.

Q. To supply the country stores?

A. Yes.

Q. And the stores in Duluth?

A. The stores in Duluth were supplied by the farmers around Duluth mostly.

Q. And what basis did you pay the farmers?

A. Whatever the market price was.

Q. Did you ever pay them prices above the general market level?

A. I wouldn't say, there wasn't very much of a market from the farmers, you couldn't get your entire supply up there, had to buy some down here.

Q. And where did you buy the balance?

A. From Minneapolis.

Q. When you took charge of the buying in Minneapolis, did you make some investigation and inquire to find out what the practice has been of your predecessor?

A. Yes, when I went to work I went to the farmers and asked them what arrangement they had with our previous buyer, because he died during the night and I took charge

the next morning and they told me they sold their goods at market prices and they based their cost on the market and I asked if it was satisfactory and they said it was, so we continued to do it that way.

[fol. 764] Q. Did you find there were a great many farmers who had been selling to the National Tea for years?

A. Yes, 15 years, some of them we still have them.

Q. Did they ever express any dissatisfaction about the treatment accorded them by the National Tea?

A. No, they were entirely satisfied, in fact they come in and visit me socially in the office when they are in town and have nothing to sell.

Q. What has been your practice with reference to buying farm products for Minneapolis?

A. We buy on the local market every day and we buy from the farmers what they bring in and pay them the market price. Sometimes onions and rutabagas might go down to a dime a bushel but I pay them the market price. However if there is a freakish market and it goes up, from two to three and one-half cents a day, I keep it on an even keel, so the farmer gets an even average for his merchandise.

Q. Are there wide fluctuations in the Minneapolis market from day to day?

A. There are certain fluctuations.

Q. In the daily supply you mean?

A. Yes.

Q. You say at times you pay the farmer more than the market price?

A. Yes.

Q. Explain that.

A. It costs the farmer a certain amount to raise his goods [fol. 765] and we have always taken care of the farmer and it is not mine or the company's intention to rob them, so we usually pay a little more if the market goes down to nine cents a bushel.

Q. Tell us whether you buy more above or below the daily fluctuations?

A. They run a pretty strong market all the time.

Q. When you talk about the market price at the exchange in Minneapolis, does that mean market price in carload or smaller lots?

A. When I go to the market in the morning, there are hundreds of farmers with their merchandise. I ask what

they want and whatever they establish as a market price I have to pay. I have to pick up fill-ins at the market every morning.

Q. Is most of the goods on the market disposed of in carload or smaller quantities?

A. On the market usually all in smaller quantities.

Q. How do you buy from the farmer?

A. All carload lots. Some of them never go to the market.

Q. So if you are paying the market price, you get the same thing for the price they are paying at the market?

A. Yes, whatever I can buy it for at the market in the morning, I pay the farmer.

Mr. Doherty: That is all.

Cross-examination.

By Mr. Orfield:

Q. Is it not a fact however on the Minneapolis market [fol. 766] there is a difference in the price paid for small and large purchases?

A. Yes.

Q. And is it not true that the people who buy large quantities buy for less than those who purchase in small quantities?

A. Yes.

Q. And is it not true you buy in very large quantities?

A. Not in the market I don't. I have only one truck that goes down in the morning.

Q. But from the farmer you buy in large quantities?

A. Yes, they bring it into our warehouse.

Q. And the prices you pay are in accordance with the scale of the larger volume purchases on the market?

A. It is according to the trend of the market.

Q. But generally speaking, you are buying in load lots on the basis of large scale purchases?

Q. Let me *a*xplain something.

Q. No. (Question read.)

A. I buy no load lots on the market.

Q. I am referring to your purchases in load lots from the farmer. When you say the price on the market determines the price you pay for your load lots, you are referring to your purchases on the market in large quantities?

A. Whatever I pay in the market I base it on.

Q. And you buy in comparatively large quantities?

A. Yes, comparatively large.

[fol. 767] Q. Reference has been made to the fact that in the country stores, you buy at the market price. By that do you mean Minneapolis market price?

A. No, there isn't a great deal of gardening done around the Twin Cities.

Q. And the result is, that most of the vegetables provided throughout the state are provided from the Minneapolis market?

A. Yes, the majority.

Q. Prior to the time when you became buyer, I think that was in the fall of 1934, did you have any personal acquaintance with the buying of meats?

A. Not here, I bought up in Duluth prior to that time.

Q. As buyer for the National Tea, are you working under the general manager?

A. Yes.

Q. And the general manager has the power to determine your buying policy?

A. Yes.

Q. Do you know whether the same thing was true of your predecessor?

A. I have no idea what conditions he was working under.

Mr. Orfield: That is all.

Redirect examination.

By Mr. Doherty:

Q. What has been the practice in reference to country store buying since you have been general buyer in Minneapolis?

[fol. 768] A. We buy everything we can from the farmers throughout the state. We encourage that all the time. Maybe he has a few radishes and sometimes we trade them for groceries. In that case he gets more than the market price and in case of cash he gets the market price.

Q. You say the Minneapolis market supplies the greater portion of the fruits and vegetables?

A. Yes, there are no apples or oranges grown here in this state. There are no fresh vegetables except during the summer time.

Q. Where are most of the fresh vegetables sold by the National Tea consumed?

A. Most of them are consumed in the cities.

Q. And that is true why?

A. That is true because they grow a little garden stuff in the country and can it for winter consumption. Our country sales are never as high as those of the Twin Cities or any city for that matter.

Q. I don't know if I am clear on this. The market price you are paying to farmers who bring their goods into your Minneapolis warehouse, you say you determine by what you pay at the market in the morning?

A. Yes.

Q. As you find that out from your own purchases?

A. Yes.

Q. Do you purchase at the exchange in load lots or smaller quantities?

A. We have only one truck there in the morning.

[fol. 769] Q. Do you buy a full truck load of goods at any one time?

A. No, just to fill what our orders call for and what the farmers have not carried in the night before.

Q. There was something you wanted to explain. What was that?

A. I was trying to explain to him last year there was too much produce and the market was very, very low. Three-quarters of the summer we overpaid the market quite a bit. When everything is high-priced, we may be a trifle under the market. Usually when stuff is high-priced, the advantage goes to the big buyer and when it is cheap, the advantage goes to the little fellow who waits until the big fellow has left the market. When the market is very high through the entire season, the big purchaser has a little advantage because he buys in large lots and the little fellow only buys a bushel and naturally it would be higher, but where there is an over-stock of produce the big buyer has a disadvantage.

Q. When you say you pay the farmer according to the general market price, do you mean the price established by small load sales on the market?

A. Yes.

Q. And you buy almost entirely on load lots?

A. Yes.

Mr. Doherty: That is all.

[fol. 770] Plaintiffs rest.

Testimony closed.

The Court: Do I understand, Mr. Doherty, you are claiming the return of certain amounts of the specific tax irrespective of whether that tax is found to be legal or not?

Mr. Doherty: Yes, that is true and I think there is no dispute as to the facts but an interpretation of the law we claim the right to recover even though the specific tax be valid.

Mr. Orfield: State at this time moves that the action of the plaintiffs and each of them be dismissed on the ground that the evidence presented has not substantiated a cause of action.

The court: Motion denied.

Exception by defendant.

IN DISTRICT COURT OF RAMSEY COUNTY

ORDER SETTLING CASE

I hereby certify upon the attached stipulation of counsel that the foregoing case consisting of 510 pages of typewritten matter, numbered 1 to 510 inclusive, together with the exhibits received and referred to in said proposed case is conformable to the truth and contains all the evidence offered or introduced on the trial of the above entitled causes, and all objections, rulings, orders and all other proceedings of such trial, and I hereby settle and allow the [fol. 771] same as the settled case herein.

Dated this 11th day of August, 1938.

RICHARD D. O'BRIEN,
Judge of District Court.

IN DISTRICT COURT OF RAMSEY COUNTY

STIPULATION SETTLING CASE

It is hereby stipulated, by and between the parties in each of the above entitled actions, through their respective counsel, that the foregoing proposed case consisting

of 510 pages of typewritten matter, numbered 1 to 510 inclusive, together with the exhibits received and referred to in said proposed case may be taken as conformable to the truth and as containing all the evidence offered or introduced on the trial of these causes, and also all objections, rulings, orders and all other proceedings of such trial, and that the same may be settled and allowed as the settled case herein by the Honorable Richard D. O'Brien, Judge of District Court of Ramsey County, without notice.

It is Further Stipulated and Understood, by and between counsel that in the event that counsel shall discover any errors or omissions in said proposed case that the same may be corrected by the Court upon proper application.

[fol. 772] Dated at St. Paul, Minnesota, this 10th day of August, 1938.

Michael J. Doherty, William Mitchell, Attorneys for Plaintiffs, William S. Ervin, Matthias N. Orfield, & John A. Pearson, Attorneys for Defendant.

In District Court Of Ramsey County

(Title of Cause, National Tea Co. Case.)

Decision

The above entitled action was tried to the Court without a jury commencing April 15 and concluding April 27, 1936, the plaintiff being represented by its attorneys, M. J. Doherty and William Mitchell, and the defendant being represented by Harry H. Peterson, Attorney General, Matthias N. Orfield, Deputy Attorney General and Roger S. Rutchick, Assistant Attorney General.

The action was brought for the recovery by the plaintiff of the amount of taxes paid by it under the Minnesota Chain Store Tax Act, Chapter 213 of the Laws of Minnesota for 1933, as amended by Chapter 16 of the Extra Session Laws of 1933-1934.

Having fully considered the evidence introduced at the hearing of the case and the briefs and oral arguments of counsel, the Court makes findings of fact as follows:

[fol. 773] FINDINGS OF FACTS

1

The legislature of the State of Minnesota, at its regular session in 1933, enacted a statute entitled, "An Act raising revenues, imposing a tax on conducting business by the system of chain stores for selling or otherwise disposing of goods, wares, articles or commodities at retail, with certain exceptions providing for the assessment and collection thereof, and for the distribution of the proceeds therefrom, providing penalties for failure to pay such tax, defining certain crimes in connection with the enforcement of such tax, and appropriating money for the administration of this act." This act was approved by the Governor on April 12, 1933, and is known as Chapter 213 of the Laws of Minnesota for 1933. The act purports to impose upon all who are engaged within the State of Minnesota in conducting a business by the system of chain stores (as the conducting of such a business is defined in the act) from any of which are sold at retail goods, wares and merchandise, an annual composite tax computed on two bases and consisting of (1), a specific tax per store (which will be designated in these findings as the specific tax) and a gross sales tax (which will be designated in these findings as the gross sales tax). Each of said units of said composite tax is graduated as set forth hereinafter.

[fol. 774] Subject to the exceptions noted below the act provides that the specific tax shall be graduated as follows:

$5 for each store in excess of 1 and not in excess of 10;
$15 for each store in excess of 10 and not in excess of 20;
$35 for each store in excess of 20 and not in excess of 30;
$65 for each store in excess of 30 and not in excess of 40;
$105 for each store in excess of 40 and not in excess of 50;
$155 for each store in excess of 50 and not in excess of

Subject to the exceptions noted below, the Chain Store Tax Act provides that the gross sales tax shall be graduated as follows:

1/20 of 1% on gross sales up to $100,000;
2/20 of 1% on gross sales in excess of $100,000 up to $200,000;
3/20 of 1% on gross sales in excess of $200,000 up to $300,000;

4/20 of 1% on gross sales in excess of $300,000 up to $400,000;

5/20 of 1% on gross sales in excess of $400,000 up to $500,000;

6/20 of 1% on gross sales in excess of $500,000 up to $600,000;

8/20 of 1% on gross sales in excess of $600,000 up to $700,000;

10/20 of 1% on gross sales in excess of $700,000 up to $800,000;

[fol. 775] 12/20 of 1% on gross sales in excess of $800,000 up to $900,000;

15/20 of 1% on gross sales in excess of $900,000 up to $1,000,000;

1% on gross sales in excess of $1,000,000.

Excepted from the act are persons conducting chain stores for the sale at retail of one or more of the following commodities:

"fuel, lumber, building material, gasoline and oils, and grain, if the gross sales of any such person from such produce or products shall, during any year for which the tax is imposed, equal or exceed 95 per centum of the total gross sales from all sources of any such person, * * *."

Also excepted are:

"co-operative associations organized under the laws of this State in good faith and not for the purpose or with the intent of evading the tax hereby imposed, * * *."

There is excepted from the gross sales tax of each person all of the sales made at one store of the owner's selection.

The taxes imposed by the act are in addition to every other form of tax for which the persons within the terms of the act were liable prior to the passage of the act.

Section 11 of this act was amended by Chapter 16 of the Extra Session Laws of 1933-1934, with reference to the recovery of money paid under the act which was not legally due. This amendment was approved by the Governor on December 23, 1933.

[fol. 776] All references herein to the act will be to the original act up to the time when it was amended and to the amended act thereafter. The terms, "chain stores" and "persons" are used with the meaning they are given in the

act. "Chain store group" is used to mean an aggregation of retail stores under a common ownership, management or control.

2

The act was adopted by the legislature for the purpose of raising revenue and also, in the exercise of the police power, for the purpose of curbing the undue expansion of chain stores.

3

At the time of and at all times subsequent to the adoption of the act the system of selling goods by the system of chain stores as carried on in Minnesota differed from the system of selling goods in independently owned stores not associated in voluntary chain, in many ways, and had the following advantages over the latter system:

(1) The chain store groups buy goods in larger quantities and thereby secure larger quantity discounts than independent stores.

(2) The chain store groups have greater financial power and thereby are enabled to take advantage of cash discounts in many cases not available to independent stores.

(3) The chain store groups receive substantial special rebates and advertising allowances generally not granted to independent stores.

[fol. 777] (4) The chain store groups make use of central warehousing and thereby effect economics in warehousing not available to independent stores.

(5) The chain store groups deliver a considerable portion of their goods from their warehouses to their several stores in full truck lots and thereby effect economies in delivery expense not available to independent stores.

(6) The chain store groups have more abundant capital and therefore have better credit and pay lower interest rates than independent stores.

(7) The chain store groups maintain research divisions which give them advance information about many things useful in buying and selling goods, such as, impending price changes and location of favorable buying markets. They also have greater skill in buying so as to keep the store stocked with goods suitable in price, style and quality to the purchasing demand.

(8) The chain store groups have a more rapid turnover than independent stores.

(9) The chain store groups, particularly in the larger cities, enjoy advertising advantages over independent stores in being able to advertise sales at several stores in the same advertisement, thereby cutting down the cost of advertising.

(10) The chain store groups use a more or less standardized method of displaying goods which has advantages in advertising and in making sales over the methods employed by independent stores.

(11) The chain store groups generally reduce inventories on the date as of which personal property taxes are assessed [fol. 778] and thereby effect economies as compared to their independent store competitors, which do not correspondingly reduce their inventories on said date.

(12) The chain store groups equip their stores with standardized equipment and in this manner effect economies in the cost of equipment and in the usefulness of equipment in case a store is discontinued.

(13) The chain store groups maintain stores only in cities and villages that have been proved to be good centers for the sale of their goods. They do no pioneering as do independent stores.

(14) Each store in a chain store group profits from the good will built up by other stores in the same system.

(15) In the past prior to the passing of the unfair trade practices act in Minnesota in 1937 chain stores have injured competitors and extended their own business by the use of loss leaders.

(16) Chain store groups manufacture and otherwise produce the goods they sell to a far greater extent than do independent stores and thereby effect economies in the cost of these goods.

(17) Chain store groups open stores only in the better locations in each city and thereby enjoy location advantages in selling goods.

Chain store groups enjoy most of the foregoing chain store advantages over stores which are members of voluntary chains.

Plaintiff enjoyed most of the foregoing chain store advantages over independent stores.

[fol. 779] 4

Many kinds of retail business are carried on in Minnesota by the chain store system. The volume of sales per store in different kinds of business varies considerably and there are considerable variations in average sales per store and in average profits per store in chain store groups selling substantially the same kinds of merchandise, but generally the chain store groups having the largest number of stores make a larger profit than chain store groups selling substantially the same kind of merchandise and having number of stores. Generally, but by no means always, profits per chain store in the same line of business tend to increase with the number of stores in a chain.

5

There are in the state various persons engaged in business by the chain store system each of whom sells to the extent of 95 per cent of its gross sales one or more of the following commodities: fuel, lumber, building material, gasoline and oils, and grains. The character of the business of such persons differs materially from the character of the business of persons subject to the chain store tax. Other taxes generally fall more heavily on such persons so exempt from the chain store tax than on persons subject to the tax. The classification of such persons as not subject to the specific tax is reasonable classification.

[fol. 780] 6

There are in the state various co-operative associations organized under the laws of the state (in good faith and not for the purpose or with the intent of evading the tax imposed by the act) who are engaged in the sale at retail by the chain store system, of the same products and commodities as are sold by plaintiffs and other chain store owners and in competition with them. Such associations differ in purpose, form of organization, and methods of doing business from the chain store organizations subject to the tax. The classification of such persons as a group not subject to the specific tax is reasonable classification.

7

The exemption from the specific tax of a single chain store, a member of a chain store group operating in other states, is based upon a reasonable classification.

8

The exemption of one store in each chain from the specific tax is based upon a reasonable classification.

9

The specific tax imposed by the act is uniform in its operation throughout the state and is uniform on the same class of subjects.

10

[fol. 781] The specific tax for the year 1933 fell due July 1, 1933. For each year thereafter the specific tax fell due on January 20 of the year following the year for which it was payable.

11

The development of chain store groups in Minnesota has had many effects injurious to the general welfare, among the most important of which are the following;

(1) By reason of the advantages of chain stores over independent stores, chain stores throughout Minnesota have gradually been driving independent stores out of business and gradually been taking over a larger and larger portion of the total field of retail sales made within the state.

(2) The development of chain store groups in Minnesota has driven out of business a considerable number of jobbers and wholesale houses within the state and thereby added considerably to unemployment and considerably lessened the value of the taxable property within the state.

(3) It has greatly reduced the number of traveling salesmen and thereby added to unemployment.

(4) It has caused farmers throughout the state to find a less ready market for their fruit and vegetable products.

(5) Money has been withdrawn from banks in the villages and smaller cities where chain stores have operated and has [fol. 782] been concentrated in the larger cities, thereby weakening the banking structure in rural communities.

A chain store group with a comparatively small number of stores is less injurious to the general welfare in the respects set forth in this paragraph than a chain store group with a large number of stores. The tendency is for the injury to the general welfare to increase with an increase in the number of stores in a chain.

12

The specific tax can readily be collected without also collecting the gross sales tax. The legislature intended that the two parts of the chain store tax should be separable.

13

The subclassification of chain stores under Section 2 (b) of the act on the basis of gross sales for the purpose of levying a progressive gross sales tax is arbitrary and discriminatory.

14

Plaintiff is a corporation organized under the laws of the State of Delaware and is and for many years has been engaged in the State of Minnesota in conducting a retail grocery business by the system of chain stores.

15

On or about July 10, 1933, the Minnesota Tax Commission [fol. 783] assessed a specific tax against plaintiff for the year 1933 in the sum of $19,760. On or about January 13, 1934, the said commission assessed a specific tax against plaintiff for the year 1934 in the sum of $16,505 and assessed a gross sales tax against said plaintiff in the sum of $21,879.67. The State Auditor and the State Treasurer demanded of plaintiff payment of said sums and threatened to enforce payment by levy upon and sale of personal property of plaintiff. On January 13, 1934, plaintiff paid said specific tax for the year 1933 in the sum of $19,760 and also interest on said specific tax in the sum of $1194.90. On January 22, 1934, plaintiff paid the specific tax for the year 1934 in the sum of $16,505 and gross sales tax for the year 1933 in the sum of $21,879.67. On or about January 20, 1935, the Minnesota Tax Commission assessed a specific tax against plaintiff for the year 1935 in the sum of $14,180 and a gross sales tax for the year 1934 in the sum of $45,222.51. On March 27, 1935, plaintiff paid to defendant under protest said amounts in the aggregate amount of $59,402.51. The aggregate amount of all chain store taxes paid by plaintiff to defendant is $118,742.08.

16

At the time of filing its return and making payment of the tax in January, 1934, plaintiff had in operation in the state

and paid a specific tax upon 142 stores at the rates prescribed by the act. At the time of filing its return in January, 1935, plaintiff had in operation and thereafter on [fol. 784] March 27, 1935, paid a specific tax upon 127 stores at the rates prescribed by the act. On July 1, 1934, plaintiff had in operation in the state only 125 stores and on July 1, 1935, only 122 stores. Plaintiff accordingly paid for the year 1934 a specific tax of $155 on each of seventeen stores in excess of the amount of specific tax due and payable for the year 1934 in the aggregate amount of $2635, and for the year 1935 a specific tax of $155 on each of five stores in excess of the amount of specific tax due and payable for the year 1935 in the aggregate amount of $775.00.

CONCLUSIONS OF LAW.

For the reasons stated in the foregoing Findings of Fact the Court make Conclusions of Law as follows:

1

The act imposes a composite occupational tax upon persons engaged in conducting business within the state by a system of chain stores.

2

When the act was passed and amended it was, since that time has been and now is within the power of the state legislature to impose the specific tax levied by the act.

3

The specific tax is valid with respect to the provision of Article 1, Section 2 of the State Constitution that "no mem- [fol. 785] ber of this State shall be * * * deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers."

4

The specific tax is valid with respect to the provision of Article 1, Section 7, of the State Constitution that "no person shall be deprived of life, liberty or property without due process of law."

5

The specific tax is valid with respect to the provision of Article 4, Section 34, of the State Constitution that all general laws "shall be uniform in their operation throughout the State."

6

The specific tax is valid with respect to the provision of Article 9, Section 1, of the State Constitution that "taxes shall be uniform upon the same class of subjects."

7

The classification of persons for the purposes of the act into such as conduct a retail business in a single store and such as conduct a retail business in two or more stores is a reasonable and valid classification. The subclassification of stores on the basis of the number within the state under a common ownership or control is a valid classification as a basis for the progressive specific tax.

[fol. 786] The classification of persons conducting retail businesses by the system of voluntary chains on a different basis than that of persons conducting retail businesses by the system of integrated chains is a reasonable and valid classification for the purpose of levying the specific tax imposed by the act.

8

The specific tax is valid with respect to the provision of Section 1 of the Fourteenth Amendment to the Constitution of the United States that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

9

The classification made by the act, whereby cooperative organizations organized under the laws of the state (in good faith and not for the purpose or with the intent of evading the tax imposed by the Act) engaged within the state in the sale at retail by the chain store system of the same products and commodities as are sold by chain stores and in competi-

tion with them are exempted from the specific tax is a reasonable and valid classification.

[fol. 787]

10

The classification made by the act whereby persons engaged in business by the system of chain stores and selling to the extent of 95 per cent of total gross sales one or more of the following commodities: fuel, lumber, building material, gasoline and oils, and grains are exempted from the specific tax is a reasonable and valid classification.

11

The provision of Section 2 (a) of the act which exempts from the specific tax one store of each person subject to the act is reasonable and valid.

12

The exemption of one store from the specific tax imposed by the act when such store is the only store within the state under a common ownership is reasonable and valid even when such store is owned by a chain having many stores outside of the state.

13

That provision of the act which imposes the same specific tax on a store which operates a whole year and a store which operates only a fraction of a year is reasonable and valid.

14

The provisions of the act imposing and providing for the collection of a gross sales tax are separable from the rest of the act.

[fol. 788]

15

The gross sales tax imposed by the act, under the holding of the Supreme Court of the United States in the case of Valentine, Chairman of the Iowa State Board of Assessment and Review et al. v. Great Atlantic and Pacific Tea Company, 299 U. S. 32, is invalid under the equal protection clause of the Fourteenth Amendment of the Constitution of the United States because the classification set up by the act for the purpose of levying the gross sales tax is arbitrary and discriminatory.

Plaintiff is entitled to recover from defendant the sum of $2635, being the amount of specific tax paid by said plaintiff to defendant on January 22, 1934, in excess of the amount owing for the year 1934, and the sum of $775, being the amount of specific tax paid by said plaintiff to defendant on March 27, 1935, in excess of the amount of the specific tax for the year 1935, and the sum of $21,879.67, being the amount of gross sales tax paid by plaintiff to defendant on January 22, 1934, and $45,222.51, being the amount of gross sales tax paid by said plaintiff to defendant on March 27, 1935, together with interest on each of said amounts at the rate of six per cent per annum from the date when said amount was paid as stated above. Said plaintiff is accordingly entitled to recover from defendant an aggre-
[fol. 789] gate principal amount of $70,512.18, together with interest thereon as indicated above.

Let Judgment Be Entered Accordingly.

Richard D. O'Brien, Judge.

Oct. 28th, 1937. Stay of 40 days. O'Brien, J.

In District Court of Ramsey County

(Title of Cause, National Tea Co. Case.)

Notice of Motion to Amend Decision

To the above named Defendant, State of Minnesota, and William S. Ervin, Attorney General, and Matthias N. Orfield, Deputy Attorney General, its Attorneys herein:

Please Take Notice, that at a special term of the above named Court to be held at the County Court House in the City of Saint Paul, Minnesota, on the thirteenth day of November, 1937, at ten o'clock A. M., or as soon thereafter as counsel may be heard, the plaintiff will move the Court for an order amending its findings of fact, conclusions of law, and order for judgment heretofore filed herein as follows, to-wit:

A

By striking from the findings of fact:

(1) Paragraph numbered 2 thereof.
(2) Paragraph numbered 3 thereof.

[fol. 790] (3) Paragraph numbered 4 thereof.
(4) Paragraph numbered 5 thereof.
(5) Paragraph numbered 6 thereof.
(6) Paragraph numbered 7 thereof.
(7) Paragraph numbered 8 thereof.
(8) Paragraph numbered 9 thereof.
(9) Paragraph numbered 10 thereof.
(10) Paragraph numbered 11 thereof.
(11) Paragraph numbered 12 thereof.
(12) Paragraph numbered 15 thereof.
(13) Paragraph numbered 16 thereof.

B

By inserting in said findings of fact:

(1) A paragraph reading as follows:

"2

The act in question is essentially a revenue measure. It went into effect on July 1, 1933. To the end of 1935 the following amounts were paid:

For the last half of 1933:

Specific tax	$43,060.00
Gross sales tax	137,764.12
For the year 1934:	
Specific tax	$42,350.00
Gross sales tax	358,786.33
For the year 1935:	
Specific tax	$37,190.00

making a total of $619,150.45.

During this period three hundred twelve (312) chains filed reports and paid a tax. Of these two hundred sixteen (216) were corporations, thirty-five (35) partnerships, fifty-[fol. 791] seven (57) individuals, and four (4) trustees and miscellaneous.

Of three hundred six (306) chains reporting for 1934, one hundred fifty-one (151) were two-store chains, fifty-six (56) were three-store chains, twenty-four (24) were four-store chains, and two hundred seventy-eight (278) were chains of ten stores or less. Only eleven (11) were chains

of more than twenty (20) stores, and only four (4) were chains of more than fifty (50) stores.

In respect to volume of sales four (4) reporting chains had aggregate sales of less than $10,000.00, eighteen (18) had aggregate sales of less than $25,000.00, fifty-three (53) had aggregate sales of less than $50,000.00, one hundred eleven (111) had aggregate sales of less than $100,000.00, one hundred eighty-five (185) had aggregate sales of less than $200,000.00, and two hundred thirteen (213) had aggregate sales of less than $300,000.00. Only fifteen (15) had aggregate sales of over $1,000,000.00, and only four (4) had aggregate sales in excess of $4,000,000.00."

(2) A paragraph reading as follows:

"3

Throughout the period concerned in this action, there were engaged in selling at retail in the State of Minnesota (a) persons operating chain store systems, (b) persons operating single stores but associated together in so-called co-operative or voluntary chains, and (c) persons operating single stores and not so associated. The figures for eighteen of the most important lines of retail business in the State show that in 1929 13.5 per cent of the total volume was [fol. 792] done by chain stores and 79.3 per cent by single stores, and in 1933 17.8 per cent was done by chain stores and 76.8 per cent by single stores. The remainder is accounted for by mail order business, house to house sales, and miscellaneous. In 1933 the number of stores operated by chains was 2,881 and the numbered operated by single store owners was 30,416. For the entire United States the figures were: 1929, chains 20 per cent, single stores 77.5 per cent; 1933, chains 25.2 per cent, single stores 71.2 per cent.

In the year 1935 the members of four voluntary chains in the grocery field operated in the State a total of 761 stores. These four were the Fairway System, the Allied Stores, the Red and White Co-operative Grocery Chain, and the Independent Grocers Alliance. The two last named operate on a national scale. The Fairway System for the year mentioned had aggregate headquarters sales to more than four hundred stores in the State of $5,500,000.00. The number of stores included and the aggregate volume of their sales exceeded those of any ownership chain in the State."

(3) A paragraph reading as follows:

"4

The plaintiff is a corporation organized under the laws of the State of Delaware, and is and for many years has been engaged in the State of Minnesota in conducting a retail grocery and meat business by the system of chain stores as defined by the Act, and if the Act be valid is subject to the tax thereby imposed.

[fol. 793] Plaintiff transacts business in the states of Minnesota, North Dakota, South Dakota, and Wisconsin. By far the greater number of its stores are located in Minnesota. On July 1, 1935, of a total of one hundred forty-seven (147) stores one hundred twenty-two (122) were located in Minnesota. Its total gross sales in the State were in the last six months of 1933, $2,900,760.00, in 1934, $5,192,250.00, and in 1935, $5,428,978.83. From 1923 to 1929 it had a rate of net profit in percentages of gross sales on its Minnesota business as follows:

Year	Percentage
1923	2.94
1924	4.39
1925	2.34
1926	2.51
1927	2.48
1928	.54
1929	1.48

For the years 1930 to 1934 it suffered a net loss on its Minnesota business in the following percentages:

Year	Percentage
1930	2.86
1931	2.78
1932	.26
1933	1.83
1934	1.97

These profit and loss figures correspond almost exactly with the profit and loss figures of the plaintiff on its entire business within and without the State of Minnesota.

A normal rate of profit for retail grocers generally for the years 1930 to 1934 was not in excess of two per cent."

[fol. 794] (4) A paragraph reading as follows:

"5

The stores of the plaintiff are distributed generally throughout the State, and are operated in both large and small cities and towns. Generally speaking, the stores are operated in direct competition with stores in the same line of business operated by other chains, by the members of voluntary chains, and by owners of single stores. Commonly in plaintiff's store locations are found competing stores involving all three types of operation. The competing chains are of various sizes as measured either by number of stores or aggregate gross sales. The result has been that these competitors have been subject to and have paid taxes under the Act at various rates, both as to the specific and gross sales tax features. Thus an analysis of the taxes paid by the plaintiff and twenty-two of its principal chain competitors for the year 1934 shows that the gross sales tax average or composite rates paid by the competitors varied from .05 per cent to .85 per cent as compared with the rate of .87 per cent paid by plaintiff. The maximum rates varied from 1/20 of one per cent to one per cent, the latter being the maximum rate paid by plaintiff. The specific tax rates (in percentage of gross sales) of plaintiff's competitors ranged from .0001 per cent to .15 per cent, as compared with the plaintiff's rate of .36 per cent. The total rates of two taxes combined varied from .056 per cent to .94 per cent for plaintiff's competitors compared with 1.23 per cent for plaintiff."

[fol. 795] (5) A paragraph reading as follows:

"6

As in the case of plaintiff and its competitors, it is true generally that sales made by persons taxed under any brackets of the Act are made in competition with like sales of the same character of merchandise made by persons who are taxed under other brackets of the Act.

The gross sales tax is laid as an excise upon individual sales. As each sale is made liability for tax upon that sale arises. Different sales, however, take different rates, though they be of identical articles or merchandise and be made in identical manner. The rate upon any sale depends upon the number and size of sales already made in the current year. The Act therefore taxes different persons at different

rates for the privilege of doing the same act, and taxes the same person at different rates for the exercise of the same privilege at different times, depending upon the number of times it has previously been exercised in a given year."

(6) A paragraph reading as follows:

"7

In Minnesota, as elsewhere, there is no constant or uniform relation between volume of gross sales and amount or rate of net profit. There are wide variations in the profit margins as between different kinds of business and different kinds of merchandise; also wide differences in the rate of net profit made by different concerns in the same line of business [fol. 796] for any given period; also wide variations in the rate of profit made by the same concern or concerns in any given line of business from year to year and from time to time. A great many factors enter into the result, among which may be mentioned efficiency of management, expenses of operation, competitive conditions, character of community, type of patrons, proportion of high and low profit margin goods sold, and trend of commodity prices.

There was considerable evidence tending to show that as the volume of business of a store or of a chain of stores increased the rate of profit diminished. Other evidence indicated that the rate of profit increased with volume up to a certain point and then declined. There was but little persuasive evidence that an increase in volume produced a higher ratio of profit as a general rule. Upon all the evidence the finding must be that there is no discernible relation between volume of gross sales and rate of profit."

(7) A paragraph reading as follows:

"8

In the light of the foregoing findings the gross sales tax is arbitrary, unreasonable, unequal, and discriminatory, and the classification of chain store systems or concerns according to the volume of their gross sales (resulting from the graduation of the gross sales tax rates) is without relation to the purpose of the Act and without relation to the value of the privilege for which the tax is exacted, and the imposition of the tax, so far as measured by Section 2 (b) of the Act is in violation of Article 9, Section 1; of the Constitution of the

[fol. 797] State of Minnesota and in violation of Article XIV, Section 1, of the Amendments to the Constitution of the United States, and is therefore void."

(8) A paragraph reading as follows:

"9

Large chains have certain business advantages over small chains and over single stores. Single stores, on the other hand, have certain advantages over chains. Where the balance of advantage lies cannot be determined from the evidence, and in the opinion of expert witnesses cannot be determined on the basis of available data on the subject.

Taking into account the very small size in number of stores and volume of sales of the great majority of chains to which the Act applies as compared with single owned stores, commonly larger as measured by capital investment and volume of business, it can be said that chain stores as defined by the Act do not as a class have advantages over single stores as a class.

The co-operative chains in certain fields, particularly the grocery field, have secured, and are securing, for their numbers substantially all the advantages of the large ownership chains.

The graduation of the specific tax rates in effect reclassifies or subclassifies chain store systems according to the number of stores operated without regard to the size or importance of the stores or value of the privilege of operating them. There is no uniformity, but on the contrary there are the widest variations in the size and importance of stores mea-[fol. 798]-sured either by volume of gross sales or by amount of net profit. This is true of the stores of any given chain, and is true as between the stores of one chain and those of another, and is particularly true as between the stores of persons engaged in one line of business compared with those engaged in other lines."

(9) A paragraph reading as follows:

"10

In the State many persons are engaged in selling at retail by the system of chain stores one or more of the following commodities, viz., fuel, lumber, building material, gasoline, oils, and grain, to the extent of ninety-five per cent of the total

gross sales of such persons from all sources each year. All such persons for the purpose of the tax imposed by the Act are within the same taxable class as those to whom the Act applies, and their exemption violates the constitutional requirement of uniformity. The exclusions of those engaged in the sale of gasoline is not justified upon the ground that they are subject to an equivalent tax under another law. The gasoline tax imposed by Section 2720-70-87, Mason's Minnesota Statutes, 1927, is not a tax upon the business of operating filling stations or of selling gasoline. It is a consumers tax upon the use of gasoline for motor power in the use of the highways of the State."

(10) A paragraph reading as follows:

[fol. 799] "11

By reason of the foregoing facts, and particularly those found in paragraphs 8 and 9, the specific tax rests upon a classification that is arbitrary, discriminatory, and whimsical, and the imposition of the tax so far as measured by Section 2 (a) of the Act is in violation of Article 9, Section 1, of the Constitution of the State of Minnesota and in violation of Article XIV, Section 1, of the Amendments to the Constitution of the United States, and is therefore void."

(11) A paragraph reading as follows:

"12

Section 5 of the Act provides that the specific tax 'shall be computed on the basis of the number of stores under a single or common ownership, supervision, or management on July 1 of each tax year'. Section 7 (a) provides that the specific tax 'shall be paid on or before January 20 each year'. Sections 5 and 7 (a) refer to the same calendar year.

No person operating or intending to operate a system of chain stores can in January of any year determine how many stores he will have in operation, or for that matter whether he will have any stores in operation, on the first of July following of the same year. Payment of the tax is therefore required to be made at a time when the liability for a tax or the amount of such liability is impossible of determination. In this respect compliance with the act is impossible. Non-compliance is under the terms of the Act penalized both civilly and criminally. The Act therefore, so

[fol. 800] far as the tax imposed is measured by Section 2 (a), is inoperative and void for ambiguity, inconsistency, unworkability, and impossibility of enforcement or compliance."

(12) A paragraph reading as follows:

"13

The Act imposes a single tax measured by two methods. Section 2 (a) and Section 2 (b) are connected and dependent component parts of a single scheme or plan of taxation. The legislature intended the two provisions as a whole. The Act being a revenue measure, it seems particularly clear that the gross sales tax must have been regarded by the legislature as the major feature of the Act and the specific tax as incidental. For the year 1934 (the only full year as to which the evidence shows the result of the operation of the Act) approximately ninety per cent of the total amount collected under the Act was derived from the gross sales tax and only approximately ten per cent from the specific tax. It must be presumed that the legislature, in adopting the law, made some approximate appraisal of the revenue to be derived from the two features of the Act, and it would be unreasonable to suppose that if it had known or anticipated that the gross sales tax feature would be invalid it would have been satisfied with the specific feature alone. The only reasonable conclusion to be drawn is that the legislature would not have adopted the specific tax provided for by this Act had it appreciated the fact that the gross sales tax feature was to be eliminated on unconstitutional grounds. For this additional reason the Act, so far as it imposes a tax measured under [fol. 801] Section 2 (a), is void because of the invalidity of the tax so far as measured under Section 2 (b), and because of the inseparability of the two features."

(13) A paragraph reading as follows:

"14

On or about July 10, 1933, the Tax Commission of the State of Minnesota assessed a specific tax against the plaintiff for the last half of the year 1933 in the sum of $19,760.00, and on or about July 20, 1934, assessed a specific tax against the plaintiff for the year 1934 in the sum of $16,-

505.00 and a gross sales tax for the last half of the year 1933 in the sum of $21,877.67, and on or about January 20, 1935, assessed a specific tax against the plaintiff for the year 1935 in the sum of $14,180.00 and a gross sales tax for the year 1934 in the sum of $45,222.51, making a total amount of tax assessed against the plaintiff under said Act of $117,545.18.

The Auditor and Treasurer of said defendant demanded of plaintiff payment of each of said sums following the assessment of the same and threatened to enforce collection and payment thereof by levy upon and sale of plaintiff's personal property in the State.

Under such threat in each instance and under protest plaintiff paid the taxes so assessed as follows:

On or about January 20, 1934 specific tax for the last half of the year 1933 in the sum of $19,760.00 together with interest thereon in the sum of $1,194.90, and a gross sales tax for the last half of the year 1933 in the sum of $21,877.67. [fol. 802] and specific tax for the year 1934 in the sum of $16,505.00, and on or about March 3, 1935, a specific tax for the year 1935 in the sum of $14,180.00 and a gross sales tax for the year 1934 in the sum of $45,222.51, making a total amount of tax paid by plaintiff under said Act, with interest, of $118,740.08."

(14) A paragraph reading as follows:

"15

At the time of filing its return and making payment of the tax in January, 1934, plaintiff had in operation in the State and paid a specific tax as upon one hundred forty-two (142) stores, and at the time of filing its return in January, 1935, plaintiff had in operation and thereafter on March 3, 1935 paid a specific tax as upon one hundred twenty-seven (127) stores, all at the rates prescribed by the Act. Plaintiff had in operation in the State on July 1, 1934, only one hundred twenty-five (125) stores, and on July 1, 1935 only one hundred-twenty-two (122) stores. On the assumption of the validity of the specific tax, therefore, plaintiff paid in excess of its liability $2,635.00 on account of the specific tax of 1934 and $775.00 on account of the specific tax of 1935."

C

By striking from the conclusions of law:

(1) Paragraph numbered 1 thereof.

(2) Paragraph numbered 2 thereof.
(3) Paragraph numbered 3 thereof.
(4) Paragraph numbered 4 thereof.
(5) Paragraph numbered 5 thereof.
[fol. 803] (6) Paragraph numbered 6 thereof.
(7) Paragraph numbered 7 thereof.
(8) Paragraph numbered 8 thereof.
(9) Paragraph numbered 9 thereof.
(10) Paragraph numbered 10 thereof.
(11) Paragraph numbered 11 thereof.
(12) Paragraph numbered 12 thereof.
(13) Paragraph numbered 13 thereof.
(14) Paragraph numbered 14 thereof.
(15) Paragraph numbered 16 thereof.

D

By inserting a conclusion of law as follows:

"For the reasons indicated in the foregoing findings of fact, the Court concludes that the Act as a whole is unconstitutional as being in violation of Article 9, Section 1, of the Constitution of the State of Minnesota and in violation of Article XIV, Section 1, of the Amendments to the Constitution of the United States, and is therefore void; that if the specific tax be not itself unconstitutional, it is nevertheless void because of inseparability from the unconstitutional gross sales tax; that the plaintiff is entitled to have and recover of the defendant the sum of $118,740.08, together with interest upon the sum of $59,337.57 from January 20, 1934, and upon the sum of $59,402.51 from March 3, 1935, all at the rate of six per cent per annum, together with plaintiff's costs and disbursements incurred in this action."

E

[fol. 804] By inserting an order for judgment following said conclusion of law as follows:

"Let judgment be entered accordingly."

If the Court shall decline to find and determine that the specific tax is unconstitutional and void, or that being otherwise valid it is not void for inseparability from the void gross sales tax feature of the Act, then

F

By inserting a conclusion of law as follows:

"For the reasons indicated in the foregoing findings of fact, the Court concludes that the gross sales tax feature of said Act is unconstitutional as being in violation of Article 9, Section 1, of the Constitution of the State of Minnesota and in violation of Article XIV, Section 1, of the Amendments to the Constitution of the United States, and is therefore void; that plaintiff is entitled to have and recover of the defendant the sum of $70,510.18 together with interest upon the sum of $24,512.67 from January 20, 1934, and upon the sum of $45,997.51 from and since March 3, 1935, all at the rate of six per cent per annum, together with plaintiff's costs and disbursements incurred in this action."

G

By inserting an order for judgment following said conclusion of law as follows:

"Let judgment be entered accordingly."

[fol. 805] Said motion will be made upon the minutes of the Court and upon the ground that the findings of fact sought to be stricken are not justified by the evidence and the findings of fact sought to be inserted are required by the evidence, and that the conclusions of law proposed to be substituted for those in the decision as filed are required by the findings of fact as sought to be amended.

Michael J. Doherty, William Mitchell, Attorneys for Plaintiff, E-1006 First National Bank Building. Saint Paul, Minnesota.

In District Court of Ramsey County

(Title of Cause, Allied Stores Corp. Case.)

Decision

The above entitled action was tried to the Court without a jury commencing April 15 and concluding April 27, 1936, the plaintiff being represented by its attorneys, M. J. Doherty and William Mitchell, and the defendant being represented by Harry H. Peterson, Attorney General,

Matthias N. Orfield, Deputy Attorney General, and Roger S. Rutchick, Assistant Attorney General.

The action was brought for the recovery by the plaintiff of the amount of taxes paid by it under the Minnesota Chain Store Tax Act, Chapter 213 of the Laws of Minnesota for 1933, as amended by Chapter 16 of the Extra Session Laws of 1933-1934.

[fol. 806] Having fully considered the evidence introduced at the hearing of the case and the briefs and oral arguments of counsel the Court makes findings of fact as follows:

Findings of Fact

1

The legislature of the State of Minnesota, at its regular session in 1933, enacted a statute entitled, "An act raising revenues, imposing a tax on conducting business by the system of chain stores for selling or otherwise disposing of goods, wares, articles or commodities at retail, with certain exceptions providing for the assessment and collection thereof, and for the distribution of the proceeds therefrom, providing penalties for failure to pay such tax, defining certain crimes in connection with the enforcements of such tax, and appropriating money for the administration of this act." This act was approved by the Governor on April 12, 1933, and is known as Chapter 213 of the Laws of Minnesota for 1933. The act purports to impose upon all who are engaged within the State of Minnesota in conducting a business by the system of chain stores (as the conducting of such a business is defined in the act) from any of which are sold at retail goods, wares and merchandise, an annual composite tax computed on two bases and consisting of (1), a specific tax per store (which will be designated in these findings as the specific tax) and a gross sales tax (which will be designated in these findings as the gross sales tax). [fol. 807] Each of said units of said composite tax is graduated as set forth hereinafter.

Subject to the exceptions noted below the act provides that the specific tax shall be graduated as follows:

$5 for each store in excess of 1 and not in excess of 10;
$15 for each store in excess of 10 and not in excess of 20;
$35 for each store in excess of 20 and not in excess of 30;
$65 for each store in excess of 30 and not in excess of 40;

$105 for each store in excess of 40 and not in excess of 50;
$155 for each store in excess of 50.

Subject to the exceptions noted below, the Chain Store Tax Act provides that the gross sales tax shall be graduated as follows:

1/20 of 1% on gross sales up to $100,000;
2/20 of 1% on gross sales in excess of $100,000 up to $200,000;
3/20 of 1% on gross sales in excess of $200,000 up to $300,000;
4/20 of 1% on gross sales in excess of $300,000 up to $400,000;
5/20 of 1% on gross sales in excess of $400,000 up to $500,000;
6/20 of 1% on gross sales in excess of $500,000 up to $600,000;
8/20 of 1% on gross sales in excess of $600,000 up to $700,000;
[fol. 808] 10/20 of 1% on gross sales in excess of $700,000 up to $800,000;
12/20 of 1% on gross sales in excess of $800,000 up to $900,000;
15/20 of 1% on gross sales in excess of $900,000 up to $1,000,000;
1% on gross sales in excess of $1,000,000.

Excepted from the act are persons conducting chain stores for the sale at retail of one or more of the following commodities:

"fuel, lumber, building material, gasoline and oils, and grain, if the gross sales of any such person from such produce or products shall, during any year for which the tax is imposed, equal or exceed 95 per centum of the total gross sales from all sources of any such person, * * *."

Also excepted are:

"cooperative associations organized under the laws of this State in good faith and not for the purpose or with the intent of evading the tax hereby imposed, * * *."

There is excepted from the gross sales tax of each person all of the sales made at one store of the owner's selection.

The taxes imposed by the act are in addition to every other form of tax for which the persons within the terms of the act were liable prior to the passage of the act.

Section 11 of this act was amended by Chapter 16 of the Extra Session Laws of 1933-1934, with reference to the recovery of money paid under the act which was not legally [fol. 809] due. This amendment was approved by the Governor on December 23, 1933.

All references herein to the act will be to the original act up to the time when it was amended and to the amended act thereaffer. The terms, "chain stores" and "persons" are used with the meaning they are given in the act. "Chain store group is used to mean an aggregation of retail stores under a common ownership, management or control.

2

The act was adopted by the legislature for the purpose of raising revenue and also, in the exercise of the police power, for the purpose of curbing the undue expansion of chain stores.

3

At the time of and at all times subsequent to the adoption of the act the system of selling goods by the system of chain stores as carried on in Minnesota differed from the system of selling goods in independently owned stores not associated in voluntary chains, in many ways, and had the following advantages over the latter system:

(1) The chain store groups buy goods in larger quantities and thereby secure larger quantity discounts than independent stores.

(2) The chain store groups have greater financial power and thereby are enabled to take advantage of cash discounts in many cases not available to independent stores.

[fol. 810] (3) The chain store groups receive substantial special rebates and advertising allowances generally not granted to independent stores.

(4) The chain store groups make use of central warehousing and thereby effect economies in warehousing not available to independent stores.

(5) The chain store groups deliver a considerable portion of their goods from their warehouses to their several stores in full truck lots and thereby effect economies in delivery expense not available to independent stores.

(6) The chain store groups have more abundant capital and therefore have better credit and pay lower interest rates than independent stores.

(7) The chain store groups maintain research divisions which give them advance information about many things useful in buying and selling goods, such as, impending price changes and location of favorable buying markets. They also have greater skill in buying so as to keep the stores stocked with goods suitable in price, style and quality to the purchasing demand.

(8) The chain store groups have a more rapid turnover than independent stores.

(9) The chain store groups, particularly in the larger cities, enjoy advertising advantages over independent stores in being able to advertise sales at several stores in the same advertisement, thereby cutting down the cost of advertising.

(10) The chain store groups use a more or less standardized method of displaying goods which has advantages in advertising and in making sales over the methods employed by independent stores.

[fol. 811] (11) The chain store groups generally reduce inventories on the dates as of which personal property taxes are assessed and thereby effect economies as compared to their independent store competitors, which do not correspondingly reduce their inventories on said date.

(12) The chain store groups equip their stores with standardized equipment and in this manner effect economies in the cost of equipment and in the usefulness of equipment in case a store is discontinued.

(13) The chain store groups maintain stores only in cities and villages that have been proved to be good centers for the sale of their goods. They do no pioneering as do independent stores.

(14) Each store in a chain store group profits from the good-will built up by other stores in the same system.

(15) In the past prior to the passing of the unfair trade practices act in Minnesota in 1937 chain stores have injured competitors and extended their own business by the use of loss leaders.

(16) Chain store groups manufacture and otherwise produce the goods they sell to a far greater extent than do independent stores and thereby effect economies in the cost of these goods.

(17) Chain store groups open stores only in the better locations in each city and thereby enjoy location advantages in selling goods.

Chain store groups enjoy most of the foregoing chain-store advantages over stores which are members of voluntary chains.

[fol. 812] 4

Many kinds of retail business are carried on in Minnesota by the chain store system. The volume of sales per store in different kinds of business varies considerably and there are considerable variations in average sales per store and in average profits per store in chain store groups selling substantially the same kinds of merchandise, but generally the chain store groups having the largest number of stores make a larger profit than chain store groups selling substantially the same kind of merchandise and having a smaller number of stores. Generally, but by no means always, profits per chain store in the same line of business tend to increase with the number of stores in a chain.

5

There are in the state various persons engaged in business by the chain store system each of whom sells to the extent of 95 per cent of its gross sales one or more of the following commodities: fuel, lumber, building material, gasoline and oils, and grains. The character of the business of such persons differs materially from the character of the business of persons subject to the chain store tax. Other taxes generally fall more heavily on such persons so exempt from the chain store tax than on persons subject to the tax. The classification of such persons as not subject to the specific tax is reasonable classification.

[fol. 813] 6

There are in the state various cooperative associations organized under the laws of the state (in good faith and not for the purpose or with the intent of evading the tax imposed by the act) who are engaged in the sale at retail by the chain store system, of the same product and commodities as are sold by plaintiffs and other chain store owners and in competition with them. Such associations differ in purpose, form of organization, and methods of doing business from the chain store organizations subject to the tax. The classification of such persons as a group not subject to the specific tax is reasonable classification.

7

The exemption from the specific tax of a single chain store, a member of a chain store group operating in other states, is based upon a reasonable classification.

8

The exemption of one store in each chain from the specific tax is based upon a reasonable classification.

9

The specific tax imposed by the act is uniform in its operation throughout the state and is uniform on the same class of subjects.

[fol 814] 10

The specific tax for the year 1933 fell due July 1, 1933. For each year thereafter the specific tax fell due on January 20 of the year following the year for which it was payable.

11

The development of chain store groups in Minnesota has had many effects injurious to the general welfare, among the most important of which are the following:

(1) By reason of the advantages of chain stores over independent stores, chain stores throughout Minnesota have gradually been driving independent stores out of business and gradually been taking over a larger and larger portion of the total field of retail sales made within the state.

(2) The development of chain store groups in Minnesota has driven out of business a considerable number of jobbers and wholesale houses within the state and thereby added considerably to unemployment and considerably lessened the value of the taxable property within the state.

(3) It has greatly reduced the number of traveling salesmen and thereby added to unemployment.

(4) It has caused farmers throughout the state to find a less ready market for their fruit and vegetable products.

(5) Money has been withdrawn from banks in the villages and smaller cities where chain stores have operated and has been concentrated in the larger cities, thereby weakening [fol. 815] the banking structure in rural communities.

A chain store group with a comparatively small number of stores is less injurious to the general welfare in the respects set forth in this paragraph than a chain-store group with a large number of stores. The tendency is for the injury to the general welfare to increase with an increase in the number of stores in a chain.

12

The specific tax can readily be collected without also collecting the gross sales tax.

13

The subclassification of chain stores under Section 2 (b) of the act on the basis of gross sales for the purpose of levying a progressive gross sales tax is arbitrary and discriminatory.

14

Plaintiff, Allied Stores, Incorporated, heretofore and at the time of the commencement of this action known as Hahn Department Stores, Incorporated, is and during and since 1929 has been the owner of all of the capital stock of the Golden Rule Inc., and L. S. Donaldson Company, corporations organized under the laws of the State of Minnesota.

15

On or about July 15, 1933, the Minnesota Tax Commission assessed a specific tax against plaintiff, Allied Stores,

[fol. 816] Incorporated, the name of which was then Hahn Department Stores, Incorporated, for the year 1933 in the sum of $5.00. On or about January 20, 1934, said commission assessed a specific tax against plaintiff for the year 1934 in the sum of $5.00 and a gross sales tax for the last six months of the year 1933 in the sum of $16,910.25. The State Auditor and the State Treasurer demanded of plaintiff payment of said sums and threatened to enforce payment by levy and sale of personal property of plaintiff, and on or about January 22, 1934, said plaintiff paid to defendant, under protest the amount of said specific tax in the sum of $10.00 and the amount of said gross sales tax in the sum of $16,910.25 and interest upon such specific tax for the year 1933 in the sum of thirty-five cents. On or about January 20, 1935, said commission assessed a specific tax against plaintiff for the year 1935 in the sum of $5.00 and a gross sales tax for the year 1934 in the sum of $40,902.38. On or about January 23, 1935, plaintiff under protest, paid to defendant said amounts.

Conclusions of Law

For the reasons stated in the foregoing Findings of Fact the Court makes Conclusions of Law as follows:

1

The act imposes a composite occupational tax upon persons engaged in conducting business within the state by a system of chain stores.

[fol. 817]

2

When the act was passed and amended it was, since that time has been and now is within the power of the state legislature to impose the specific tax levied by the act.

3

The specific tax is valid with respect to the provision of Article 1, Section 2 of the State Constitution that "no member of this State shall be * * * deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers."

4

The specific tax is valid with respect to the provision of Article 1, Section 7, of the State Constitution that "no per-

son shall be deprived of life, liberty or property without due process of law."

5

The specific tax is valid with respect to the provision of Article 4, Section 34, of the State Constitution that all general laws "shall be uniform in their operation throughout the State."

6

The specific tax is valid with respect to the provision of Article 9, Section 1, of the State Constitution that "taxes shall be uniform upon the same class of subjects."

[fol. 818]

7

The classification of persons for the purposes of the act into such as conduct a retail business in a single store and such as conduct a retail business in two or more stores is a reasonable and valid classification. The subclassification of stores on the basis of the number within the state under a common ownership or control is a valid classification as a basis for the progressive specific tax.

The classification of persons conducting retail businesses by the system of voluntary chains on a different basis than that of persons conducting retail businesses by the system of integrated chains is a reasonable and valid classification for the purpose of levying the specific tax imposed by the act.

8

The specific tax is valid with respect to the provision of Section 1 of the Fourteenth Amendment to the Constitution of the United States that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

9

The classification made by the act, whereby co-operative organizations organized under the laws of the state (in good faith and not for the purpose or with the intent of evading [fol. 819] the tax imposed by the Act) engaged within the

state in the sale at retail by the chain store system of the same products and commodities as are sold by chain stores and in competition with them are exempted from the specific tax is a reasonable and valid classification.

10

The classification made by the act whereby persons engaged in business by the system of chain stores and selling to the extent of 95 per cent of total gross sales one or more of the following commodities: fuel, lumber, building material, gasoline and oils, and grains are exempted from the specific tax is a reasonable and valid classification.

11

The provision of Section 2 (a) of the act which exempts from the specific tax one store of each person subject to the act is reasonable and valid.

12

The exemption of one store from the specific tax imposed by the act when such store is the only store within the state under a common ownership is reasonable and valid even when such store is owned by a chain having many stores outside of the state.

13

That provision of the act which imposes the same specific tax on a store which operates a whole year and a store which [fol. 820] operates only a fraction of a year is reasonable and valid.

14

The provisions of the act imposing and providing for the collection of a gross sales tax are separable from the rest of the act.

15

The gross sales tax imposed by the act, under the holdings of the Supreme Court of the United States in the case of Valentine, Chairman of the Iowa State Board of Assessment and Review et al. v. Great Atlantic and Pacific Tea Company, 299 U. S. 32, is invalid under the equal protection clause of the Fourteenth Amendment of the Constitution of the United States because the classification set by the act

for the purpose of levying the progressive gross sales tax is arbitrary and discriminatory.

16

Plaintiff, Allied Stores Incorporated, is entitled to recover from defendant the sum of $16,910.25, being the amount of gross sales tax paid by said plaintiff to defendant on January 22, 1934, and $40,902.38, being the amount of gross sales tax paid by said plaintiff to defendant on January 23, 1935, together with interest on each of said amounts from the date when said amount was paid as stated above. Said plaintiff is accordingly entitled to recover from defendant an aggre-
[fol. 821] gate principal amount of $57,812.63 and interest thereon as indicated above.

Let Judgment be entered accordingly.

Richard D. O'Brien, Judge.

Oct. 18, '37.

Stay of 40 days. O'Brien, J.

IN DISTRICT COURT OF RAMSEY COUNTY

NOTICE OF MOTION TO AMEND DECISION

To the above named Defendant, State of Minnesota, and William S. Ervin, Attorney General, and Matthias N. Orfield, Deputy Attorney General, its Attorneys herein:

Please Take Notice, that at a special term of the above named Court to be held at the County Court House in the City of Saint Paul, Minnesota, on the thirteenth day of November, 1937, at ten o'clock A. M., or as soon thereafter as counsel may be heard, the plaintiff will move the Court for an order amending its findings of fact, conclusions of law, and order for judgment heretofore filed herein as follows, to-wit:

A.

By striking from the findings of fact:

(1) Paragraph numbered 2 thereof.

(2) Paragraph numbered 3 thereof.

(3) Paragraph numbered 4 thereof.

[fol. 822] (4) Paragraph numbered 5 thereof.

(5) Paragraph numbered 6 thereof.

(6) Paragraph numbered 7 thereof.
(7) Paragraph numbered 8 thereof.
(8) Paragraph numbered 9 thereof.
(9) Paragraph numbered 10 thereof.
(10) Paragraph numbered 11 thereof.
(11) Paragraph numbered 12 thereof.

B.

By inserting in said findings of fact:

(1) A paragraph reading as follows:

"2.

The act in question is essentially a revenue measure. It went into effect on July 1, 1933. To the end of 1935 the following amounts were paid:

For the last half of 1933:	
Specific tax	$43,060.00
Gross sales tax	137,764.12
For the year 1934:	
Specific tax	$42,350.00
Gross sales tax	358,786.33
For the year 1935:	
Specific tax	$37,190.00

making a total of $619,150.45.

During this period three hundred twelve (312) chains filed reports and paid tax. Of these two hundred sixteen (216) were corporations, thirty-five (35) partnerships, fifty-seven (57) individuals, and four (4) trustees and miscellaneous.

Of three hundred six (306) chains reporting for 1934, one hundred fifty-one (151) were two-store chains, fifty-six [fol. 823] (56) were three-store chains, twenty-four (24) were four-store chains, and two hundred seventy-eight (278) were chains of ten stores or less. Only eleven (11) were chains of more than twenty (20) stores, and only four (4) were chains of more than fifty (50) stores.

In respect to volume of sales four (4) reporting chains had aggregate sales of less that $10,000.00, eighteen (18) had aggregate sales of less than $25,000.00, fifty-three (53) had aggregate sales of less than $50,000.00, one hundred eleven (111) had aggregate sales of less than $100,000.00,

one hundred eighty-five (185) had aggregate sales of less than $200,000.00, and two hundred thirteen (213) had aggregate sales of less than $300,000.00. Only fifteen (15) had aggregate sales of over $1,000,000.00, and only four (4) had aggregate sales in excess of $4,000,000.00."

(2) A paragraph reading as follows:

"3.

Throughout the period concerned in this action, there were engaged in selling at retail in the State of Minnesota (a) persons operating chain store systems, (b) persons operating single stores but associated together in so-called cooperative or voluntary chains, and (c) persons operating single stores and not so associated. The figures for eighteen of the most important lines of retail business in the State show that in 1929 13.5 per cent of the total volume was done by chain stores and 79.3 per cent by single stores, and in 1933 17.8 per cent was done by chain stores and 76.8 per [fol. 824] cent by single stores. The remainder is accounted for by mail order business, house to house sales, and miscellaneous. In 1933 the number of stores operated by chains was 2,881 and the number operated by single store owners was 30,416. For the entire United States the figures were: 1929, chains 20 per cent, single stores 77.5 per cent; 1933, chains 25.2 per cent, single stores 71.2 per cent."

(3) A paragraph reading as follows:

"4.

The plaintiff is a corporation, and during and since 1929 has been the owner of all the capital stock of The Golden Rule, Inc. and L. S. Donaldson Company, corporations organized under the laws of the State of Minnesota, and if the Act be valid the plaintiff is subject to the tax thereby imposed. At the commencement of this action the name of the plaintiff was Hahn Department Store, Incorporated. Since then the name of the plaintiff has been changed to Allied Stores Corporation. Since 1929 and before, The Golden Rule, Inc. operated a retail department store in the city of Saint Paul, Minnesota, and L. S. Donaldson Company operated a retail department store in the city of Minneapolis, Minnesota.

From 1929 to 1934 the L. S. Donaldson Company and The Golden Rule, Inc. had a rate of net profit in percentage of gross sales as follows (Profit is indicated by "P" and Loss by "L"):
[fol. 825]

Year	L. S. Donaldson Company	The Golden Rule, Inc.
1929	L. 10.11	L. 1.26
1930	" 7.48	P. 0.51
1931	" 9.02	" 0.55
1932	" 13.27	L. 3.97
1933	" 8.10	P. 0.17
1934	L. 3.25	L. 1.30

The total result of the six years' operations by The Golden Rule, Inc. was a net loss.

The average net profit or loss ratios of department stores generally for the years 1932, 1933, and 1934 were as follows, the stores being grouped according to sales volume per store:

Sales Volume	1932	1933	1934
$ 500,000 to $ 1,000,000	L. 7.9	L. 0.7	P. 1.3
$1,000,000 to $ 2,000,000	L. 6.6	P. 0.4	P. 0.8
$2,000,000 to $ 5,000,000	L. 5.3	L. 0.8	P. 0.1
$5,000,000 to $10,000,000	L. 5.5	L. 1.5	P. 0.4
Over $10,000,000	L. 6.1	L. 1.1	L. 0.6"

(4) A paragraph reading as follows:

"5.

In all material respects The Golden Rule store and the L. S. Donaldson Company store are operated as independent units. There is no concentration of management or superiority in respect of management over other department stores. There is no joint buying, no joint warehousing, no common pricing or sales policy and no standardization in any particular.

Both The Golden Rule store and the L. S. Donaldson Company store are operated in competition with untaxed other department stores and specialty stores in Saint Paul and [fol. 826] Minneapolis, some of which are members of voluntary chains and some are members of national ownership chains operating but one store in Minnesota. The evidence

fails to indicate that either store has any advantage over its competitors because of the fact that the corporate capital stock of the companies operating these two stores is owned by the plaintiff."

(5) A paragraph reading as follows:

"6.

As in the case of plaintiff and its competitors, it is true generally that sales made by persons taxed under any brackets of the Act are made in competition with like sales of the same character of merchandise made by persons who are taxed under other brackets of the Act.

The gross sales tax is laid as an excise upon individual sales. As each sale is made liability for tax upon that sale arises. Different sales, however, take different rates, though they be of identical articles or merchandise and be made in identical manner. The rate upon any sale depends upon the number and size of sales already made in the current year. The Act therefore taxes different persons at different rates for the privilege of doing the same act, and taxes the same person at different rates for the exercise of the same privilege at different times, depending upon the number of times it has previously been exercised in a given year."

[fol. 827] (6) A paragraph reading as follows:

"7.

In Minnesota, as elsewhere, there is no constant or uniform relation between volume of gross sales and amount or rates of net profit. There are wide variations in the profit margins as between different kinds of business and different kinds of merchandise; also wide differences in the rate of net profit made by different concerns in the same line of business for any given period; also wide variations in the rate of profit made by the same concern or concerns in any given line of business from year to year and from time to time. A great many factors enter into the result, among which may be mentioned efficiency of management, expenses of operation, competitive conditions, character of community, type of patrons, proportion of high and low profit margin, goods sold and trend of commodity prices.

There was considerable evidence tending to show that as the volume of business of a store or of a chain of stores

increased the rate of profit diminished. Other evidence indicated that the rate of profit increased with volume up to a certain point and then declined. There was but little persuasive evidence that an increase in volume produced a higher ratio of profit as a general rule. Upon all the evidence the finding must be that there is no discernible relation between volume of gross sales and rate of profit."

(7) A paragraph reading as follows:

[fol. 828] "8.

In the light of the foregoing findings the gross sales tax is arbitrary, unreasonable, unequal, and discriminatory, and the classification of chain store systems or concerns according to the volume of their gross sales (resulting from the graduation of the gross sales tax rates) is without relation to the purpose of the Act and without relation to the value of the privilege for which the tax is exacted, and the imposition of the tax, so far as measured by Section 2 (b) of the Act is in violation of Article 9, Section 1, of the Constitution of the State of Minnesota, and in violation of Article XIV, Section 1, of the Amendments to the Constitution of the United States, and is therefore void."

(8) A paragraph reading as follows:

"9.

Large chains have certain business advantages over small chains and over single stores. Single stores, on the other hand, have certain advantages over chains. Where the balance of advantage lies cannot be determined from the evidence, and in the opinion of expert witnesses cannot be determined on the basis of available data on the subject.

Taking into account the very small size in number of stores and volume of sales of the great majority of chains to which the Act applies as compared with single owned stores, commonly larger as measured by capital investment and volume of business, it can be said that chain stores as defined by the Act do not as a class have advantages over [fol. 829] single stores as a class.

The cooperative chains in certain fields, particularly the grocery field, have secured, and are securing, for their members substantially all the advantages of the large ownership chains.

The graduation of the specific tax rates in effect reclassifies or subclassifies chain store systems according to the number of stores operated without regard to the size or importance of the stores or value of the privilege of operating them. There is no uniformity, but on the contrary there are the widest variations in the size and importance of stores measured either by volume of gross sales or by amount of net profit. This is true of the stores of any given chain, and is true as between the stores of one chain and those of another, and is particularly true as between the stores of persons engaged in one line of business compared with those engaged in other lines."

(9) A paragraph reading as follows:

"10.

In the State many persons are engaged in selling at retail by the system of chain stores one or more of the following commodities, viz., fuel, lumber, building material, gasoline, oils, and grain, to the extent of ninety-five per cent of the total gross sales of such persons from all sources each year. All such persons for the purpose of the tax imposed by the Act are within the same taxable class as those to whom the Act applies, and their exemption violates the constitutional requirement of uniformity. The exclusion of those engaged [fol. 830] in the sale of gasoline is not justified upon the ground that they are subject to an equivalent tax under another law. The gasoline tax imposed by Section 2720-70-87, Mason's Minnesota Statutes, 1927, is not a tax upon the business of operating filling stations or of selling gasoline. It is a consumer's tax upon the use of gasoline for motor power in the use of the highways of the State."

(10) A paragraph reading as follows:

"11.

By reason of the foregoing facts and particularly those found in paragraphs 9 and 10, the specific tax rests upon a classification that is arbitrary, discriminatory, and whimsical, and the imposition of the tax so far as measured by Section 2 (a) of the Act is in violation of Article 9, Section 1, of the Constitution of the state of Minnesota and in violation of Article XIV, Section 1, of the Amendments

to the Constitution of the United States, and is therefore void."

(11) A paragraph reading as follows:

"12.

Section 5 of the Act provides that the specific tax 'shall be computed on the basis of the number of stores under a single or common ownership, supervision, or management on July 1 of each tax year'. Section 7 (a) provides that the specific tax 'shall be paid on or before January 20 each year'. Sections 5 and 7 (a) refer to the same calendar [fol. 831] year.

No person operating or intending to operate a system of chain stores can in January of any year determine how many stores he will have in operation, or for that matter whether he will have any stores in operation, on the first of July following of the same year. Payment of the tax is therefore required to be made at a time when the liability for a tax or the amount of such liability is impossible of determination. In this respect compliance with the Act is impossible. Non-compliance is under the terms of the Act penalized both civilly and criminally. The Act, therefore, so far as the tax imposed is measured by Section 2 (a) is inoperative and void for ambiguity, inconsistency, unworkability, and impossibility of enforcement or compliance."

(12) A paragraph reading as follows:

"13.

The Act imposes a single tax measured by two methods. Section 2 (a) and Section 2 (b) are connected and dependent component parts of a single scheme or plan of taxation. The legislature intended the two provisions as a whole. The Act being a revenue measure, it seems particularly clear that the gross sales tax must have been regarded by the legislature as the major feature of the Act and the specific tax as incidental. For the year 1934 (the only full year as to which the evidence shows the result of the operation of the Act) approximately ninety per cent of the total amount collected under the Act was derived from the gross sales tax and only approximately ten per cent from the specific tax. It must be presumed that the legislature, in adopting [fol. 832] the law, made some approximate appraisal of

the revenue to be derived from the two features of the Act; and it would be unreasonable to suppose that if it had known or anticipated that the gross sales tax feature would be invalid it would have been satisfied with the specific tax feature alone. The only reasonable conclusion to be drawn is that the legislature would not have adopted the specific tax provided for by this Act had it appreciated the fact that the gross sales tax feature was to be eleminated on unconstitutional grounds. For this additional reason the Act, so far as it imposes a tax measured under Section 2 (a), is void because of the invalidity of the tax so far as measured under Section 2 (b), and because of the inseparability of the two features."

(13) A paragraph reading as follows:

"14.

On or about July, 1933, the Tax Commission of the State of Minnesota assessed a specific tax against the plaintiff, Allied Stores Corporation, the name of which was then Hahn Department Stores, Incorporated for the year 1933 in the sum of $5.00, and on or about January 20, 1934, assessed a specific tax against the plaintiff for the year 1934 in the sum of $5.00 and a gross sales tax for the last six months of the year 1933 in the sum of -16,910.25, and on or about January 20, 1935, assessed a specific tax against the plaintiff for the year 1935 in the sum of $5.00 and a gross sales tax for the year 1934 in the sum of $40,902.38, making a total of taxes assessed against the plaintiff under [fol. 833] the said Act of $57,827.63.

The Auditor and Treasurer of said defendant demanded of plaintiff payment of each of said sums following the assessment of the same and threatened to enforce collection and payment thereof by levy upon and sale of plaintiff's personal property in the State.

Under such threat in each instance and under protest plaintiff paid the taxes so assessed as follows:

On or about January 22, 1934, specific tax for the last half of the year 1933 in the sum of $5.00, together with interest in the sum of thirty-five cents, and specific tax for the year 1934 in the amount of $5.00 and a gross sales tax for the last half of the year 1933 in the amount of -16,910.25, and on or about January 23, 1935, a specific tax for the year 1935 in the sum of $5.00 and a gross sales tax for the

year 1934 in the sum of $40,902.38, making a total amount of tax paid by plaintiff under said Act, with interest, of $57,827.98."

(14) A sentence preceding the last sentence of paragraph 15 of the findings of fact reading as follows:

"The State Auditor and State Treasurer demanded of plaintiff said sums and threatened to enforce payment by levy and sale of plaintiff's personal property."

C.

By striking from the conclusions of law:

(1) Paragraph numbered 1 thereof.
(2) Paragraph numbered 2 thereof.
[fol. 834] (3) Paragraph numbered 3 thereof.
(4) Paragraph numbered 4 thereof.
(5) Paragraph numbered 5 thereof.
(6) Paragraph numbered 6 thereof.
(7) Paragraph numbered 7 thereof.
(8) Paragraph numbered 8 thereof.
(9) Paragraph numbered 9 thereof.
(10) Paragraph numbered 10 thereof.
(11) Paragraph numbered 11 thereof.
(12) Paragraph numbered 12 thereof.
(13) Paragraph numbered 13 thereof.

D.

By inserting a conclusion of law as follows:

"For the reasons indicated in the foregoing findings of fact, the Court concludes that the Act as a whole is unconstitutional as being in violation of Article 9, Section 1, of the Constitution of the State of Minnesota and in violation of Article XIV, Section 1, of the Amendments to the Constitution of the United States, and is therefore void; that if the specific tax be not itself unconstitutional, it is nevertheless void because of inseparability from the unconstitutional gross sales tax; that the plaintiff is entitled to have and recover of the defendant the sum of $57,827.98, together with interest upon the sum of $16,920.60 from January 22, 1934, and upon the sum of $40,907.38 from January 23, 1935, all at the rate of six per cent per annum, together with plaintiff's costs and disbursements incurred in this action."

[fol. 835]

E.

By inserting an order for judgment following said conclusion of law as follows:

"Let judgment be entered accordingly."

If the Court shall decline to find and determine that the specific tax is unconstitutional and void, or that being otherwise valid it is not void for inseparability from the void gross sales tax feature of the Act, then

F.

By inserting a conclusion of law as follows:

"For the reasons indicated in the foregoing findings of fact, the Court concludes that the gross sales tax feature of said Act is unconstitutional as being in violation of Article 9, Section 1, of the Constitution of the State of Minnesota and in violation of Article XIV, Section 1, of the Amendments to the Constitution of the United States, and is therefore void; that plaintiff is entitled to have and recover of the ~~defendant~~ the sum of $57,812.63, together with interest upon the sum of $16,910.25 from January 22, 1934, and upon the sum of $40,902.38 from January 23, 1935, all at the rate of six per cent per annum, together with plaintiff's costs and disbursements incurred in this action."

G.

By inserting an order for judgment following said conclusion of law as follows:

"Let judgment be entered accordingly."

[fol. 836] Said motion will be made upon the minutes of the Court and upon the ground that the findings of fact sought to be stricken are not justified by the evidence and the findings of fact sought to be inserted are required by the evidence, and that the conclusions of law proposed to be substituted for those in the decision as filed are required by the findings of fact as sought to be amended.

Michael J. Doherty, William Mitchell, Attorneys for Plaintiff, E-1006 First National Bank Building, Saint Paul, Minnesota.

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[fols. 837-838]

PLAINTIFF'S EXHIBIT E*

National Tea Company—Minneapolis

Earnings Statement—Minnesota Operations

1923 to 1934, Inclusive—Based on Ratio of Sales Within and Without Minnesota

	1923	1924	1925	1926	1927	1928	1929	1930	1931	1932	1933	1934	Total
Net Sales	2,057,307.80	2,417,820.09	3,467,030.11	4,541,008.45	6,418,966.01	9,393,649.23	9,629,609.69	8,269,121.31	7,561,697.34	6,532,002.93	5,735,560.94	5,298,886.82	71,322,660.72
Cost of Sales	1,693,667.37	1,950,846.42	2,859,931.75	3,684,076.21	5,091,746.25	7,456,998.36	7,523,701.60	6,545,231.43	5,813,549.96	4,982,505.31	4,346,681.91	4,036,267.49	55,985,204.06
Gross Profit	368,640.43	466,973.67	607,098.36	856,932.24	1,327,219.76	1,936,650.87	2,105,908.09	1,723,889.88	1,748,147.38	1,549,497.62	1,388,879.03	1,262,619.33	15,337,456.66
Operating Expense	293,397.80	346,636.75	508,312.93	713,153.42	1,131,677.70	1,870,661.65	1,921,931.96	1,931,043.11	1,796,281.80	1,563,198.20	1,441,325.57	1,319,065.10	14,836,685.99
Operating Profit	70,242.63	120,336.92	98,785.43	143,778.82	195,542.06	65,989.22	183,976.13	207,153.23*	48,134.42*	13,700.58*	52,446.54*	56,445.77*	500,770.67
Other Expense, Less Other Income	1,269.94	1,168.09*	5,697.10	11,793.58	11,153.65	7,469.58	23,046.20	29,499.88	10,475.94	3,037.76	11,011.97	10,999.56*	102,287.95
Net Profit Before Deducting Federal Taxes and Chain Store Tax	68,972.69	121,505.01	93,088.33	131,985.24	184,388.41	58,519.64	160,929.93	236,653.11*	58,610.36*	16,738.34*	63,458.51*	45,446.21*	398,482.72
Provision for Federal Taxes	8,378.18	15,364.82	12,082.59	17,695.75	25,103.11	7,731.73	18,309.40	.....	.....	.....	.....	.....	104,665.58
Chain Store Tax—Minnesota	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	41,639.67	59,092.51	100,732.18
Net Profit (or Loss*) for Year Ending 12/31	60,594.51	106,140.19	81,005.74	114,289.49	159,285.30	50,787.91	142,620.53	236,653.11*	58,610.36*	16,738.34*	105,098.18*	104,538.72*	193,084.96
% Net Profit to Sales	2.94%	4.39%	2.34%	2.51%	2.48%	.54%	1.48%	2.86%*	.78%*	.26%*	1.83%*	1.97%*	.27%

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Fols. 839-840

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PLAINTIFF'S EXHIBIT F

National Tea Company—Minneapolis

Annual Earnings Statement

Entire Company

	1923	1924	1925	1926	1927	1928	1929	1930	1931	1932	1933	1934	Total
Sales	2,057,307.80	2,417,820.09	3,467,030.11	4,541,008.45	6,495,911.48	9,983,990.98	10,231,623.61	8,957,166.33	8,364,661.19	7,289,426.92	6,490,350.69	6,086,254.25	76,382,506.9
Cost of Sales	1,693,667.37	1,950,846.42	2,859,931.75	3,684,076.21	5,152,782.09	7,925,631.57	7,994,060.50	7,089,837.56	6,430,881.00	5,560,256.34	4,918,663.81	4,636,021.09	59,896,655.71
Gross Profit	363,640.43	466,973.67	607,098.36	856,932.24	1,343,129.39	2,058,359.41	2,237,563.11	1,867,328.77	1,933,780.19	1,729,170.58	1,571,641.88	1,450,233.16	16,485,851.19
Operating Expense	293,397.80	346,636.75	508,312.93	713,153.42	1,145,196.36	1,987,805.62	2,041,955.74	2,091,888.46	1,987,022.67	1,744,039.04	1,630,312.39	1,514,087.15	16,003,808.3
Operating Profit	70,242.63	120,336.92	98,785.43	143,778.82	197,933.03	70,553.79	195,607.37	224,559.69*	53,242.48*	14,868.46*	58,670.51*	63,853.99*	482,042.8
Other Expense less other Income	1,269.94	1,168.09*	5,697.10	11,793.58	11,287.33	7,939.01	24,486.98	31,954.46	11,588.36	4,209.32	12,460.96	12,634.59*	108,884.3
Net Profit Before Deducting Federal Taxes	68,972.69	121,505.01	93,088.33	131,985.24	186,645.70	62,614.78	171,120.39	256,514.15*	64,830.84*	19,077.78*	71,131.47*	51,219.40*	373,158.5
Provision for Federal Taxes	8,378.18	15,364.82	12,082.59	17,695.75	25,404.03	8,217.63	19,454.05						106,597.0
Net Profit for year ending Dec. 31st	60,594.51	106,140.19	81,005.74	114,289.49	161,241.67	54,397.15	151,666.34	256,514.15*	64,830.84*	19,077.78*	71,131.47*	51,219.40*	266,561.4
	2.94%	4.39%	2.34%	2.51%	2.49%	.55%	1.48%	2.86%*	.77%*	.24%*	1.10%*	.84%*	.3
Chain Store Tax											41,639.67	59,718.11	101,357.7
Net Loss After Chain Store Tax											112,771.14*	110,937.51*	165,203.0
											1.74%*	1.82%	.2

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[fols. 841-842]

PLAINTIFF'S EXHIBIT H

National Tea Company—Minneapolis

Per Cent Gross Sales Tax to Sales 1933-1934

Per Cent Specific Tax to Sales 1933-1934

		Sales	Specific tax	Percent to Sales	Gross Sales Tax	Percent to Sales	Total Tax	Percent to Sales
1933	7/1 to 12/31	2,900,760.61	19,760.00	0.681*	21,879.67	0.754*	41,639.67	1.435*
1934	1/1 to 12/31	5,290,845.89	16,505.00	0.312*	45,222.51	0.855*	61,727.51	1.167*

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[fols. 843-844] PLAINTIFF'S EXHIBIT "I"

Analysis of Tax Payments Under the Minnesota Chain Store Tax Act

Chains Reporting Classified as to Form of Organization

Corporations	216
Individuals	57
Partnerships	35
Trustees and Miscellaneous	4
Total number of chains reporting during the three years 1933, 1934, and 1935	312

Chains Reporting Classified According to Number of Stores in Chain, Including Exempt Store

Number of Stores in Chain	Number of Chains		
	1933	1934	1935
2	156	151	139
3	51	56	48
4	29	28	22
5	12	14	18
6	10	8	9
7	7	6	6
8	4	6	5
9	3	2	7
10	6	7	4
11	5	3	0
12	0	1	3
13	2	2	2
14	2	2	2
15	1	3	3
16	3	3	2
17	2	2	0
19	2	1	0
20	1	0	0
21	0	1	2
22	1	0	0
23	0	1	2
24	1	1	0
26	1	1	1
29	1	0	0
30	0	1	0
31	0	0	1
41	0	1	0
42	1	0	0
45	0	0	1
46	1	1	1
58	1	0	0
59	0	0	1
60	0	1	1
62	1	1	0
73	0	0	1

Number of Stores in Chain	Number of Chains 1933	1934	1935
75	1	1	0
128	0	0	1
155	0	1	0
164	1	0	0
Total number of chains reporting	306	306	282

[fols. 845-846] PLAINTIFF'S EXHIBIT J

Chains Filing Returns in 1934 Classified According to Total Gross Sales Reported for That Year

1.	Under $10,000	4
2.	$10,000 to $25,000	14
3.	$25,000 to $50,000	35
4.	$50,000 to $100,000	58
5.	$100,000 to $200,000	74
6.	$200,000 to $300,000	28
7.	$300,000 to $500,000	31
8.	$500,000 to $1,000,000	21
9.	$1,000,000 to $2,000,000	6
10.	$2,000,000 to $3,000,000	3
11.	$3,000,000 to $4,000,000	0
12.	$4,000,000 to $5,000,000	2
13.	Over $5,000,000	4
	Total	280

PLAINTIFF'S EXHIBIT K

1934

Store	Specific Tax	Sales Tax	Taxable Gross Sales	Maximum Gross Sales Tax Rate, 1% or Fraction Thereof	Composite Gross Sales Tax Rate	Percentage of Gross Sales in Specific Tax	Total of Two Preceding Percentages
National Tea Company	$18,520	$45,222.61	$5,192,250	1%	.87%	.36 %	1.23 %
Hahn Department Stores, Inc	5	40,902.38	4,760,238	1%	.85%	.0001%	.8501%
Woolworth; F. W. Co	1,825	31,458.04	3,815,804	1%	.82%	.047 %	.867 %
Red Owel Stores, Inc	6,120	32,085.33	4,045,482	1%	.79%	.15 %	.94 %
Kresge, S. S. Co	105	13,409.54	2,010,954	1%	.66%	.005 %	.665 %
Piggly Wiggly, N. W. Inc	60	1,123.48	618,370	1/20	.18%	.10 %	.28 %
Gershgol's Economy Market	35	953.58	567,860	6/20	.17%	.006 %	.176 %
City Market Co., Inc	35	894.55	548,186	6/20	.16%	.006 %	.166 %
Witt's Market House Co	15	659.33	463,732	5/20	.14%	.003 %	.143 %
Buehler Bros., Inc	25	356.68	328,342	4/20	.11%	.008 %	.118 %
Hartz, L. B. Stores, Inc	45	361.63	330,814	4/20	.11%	.013 %	.123 %
Grand Union Tea Co	10	214.38	242,920	3/20	.08%	.004 %	.084 %
Wallace Mercantile Co	10	46.63	93,269	1/20	.05%	.011 %	.061 %
Stillman Grocery Co	5	39.12	78,246	1/20	.05%	.006 %	.056 %
Thomas Markets Co	10	1.00	1,994	1/20	.05%	.50 %	.55 %
Eagle Provision Co	10	11.00	22,198	1/20	.05%	.045 %	.095 %
Flory, A. F	5	5.38	10,754	1/20	.05%	.047 %	.097 %
Hirmer Bros	5	6.80	13,600	1/20	.05%	.036 %	.086 %
Jewel Tea Co	10	56.39	106,386	2/20	.05%	.009 %	.059 %
Landin Food Stores, O. H	20	42.15	84,290	1/20	.05%	.023 %	.073 %
Michaud Bros	5	33.97	67,933	1/20	.05%	.007 %	.057 %
Prescott Cash & Carry	5	6.44	12,887	1/20	.05%	.039 %	.089 %
Peter, Geo. & Sons	5	21.08	42,160	1/20	.05%	.011 %	.061 %

Table 3.—Major operating results, as percentages of net sales, arranged from low to high according to gross margin percentages, by kind of chain, all years combined.

Kind of Chain	Net Sales	Cost of Merchandise sold (percent)	Gross Margin (Percent)	Rank of Gross Margin	Operating Expense (Percent)	Rank of Operating Expenses	Net Operating Profit (Percent)	Rank of Net Operating Profit
Gro. & Meat	$8,799,377,641	80.98	19 02	1	16.20	1	2.82	12
Gen'l mdse	91,444,326	79.83	20.17	2	16.51	2	3.66	17
Grocery	2,194,925,313	79.42	20.58	3	18.48	3	2.10	6
Meat	192,494.981	77.59	22.41	4	19.96	4	2.45	9
Dry goods	21,755.180	74.80	25.20	5	24.05	6	1.15	4
D. G. & apparel	1,153,910,578	73.82	26.18	6	20.25	5	5.93	22
Var. (unlimited)	10,215,007	72.33	27.67	7	27.44	11	.23	2
Hardware	55,814,083	71.24	28.76	8	25.52	7	3.24	15
Tobacco	656,636,378	70.77	29.23	9	26.55	10	2.68	10
Var. ($5 limit)	20,575,090	70.59	29.41	10	26.53	9	2.88	13
Dept. store	4,411,083,150	67.82	32.18	11	27.73	12	4.45	20
M. & W. shoes	587,572,435	67.62	32.38	12	29.21	13	3.17	14
M. r'dy-to-wear	248,568,975	67.21	32.79	13	30.40	17	2.39	8
W. accessories	25,139,505	67.06	32.94	14	30.25	16	2.69	11
W. r'dy-to-wear	632,882,542	66.17	33.83	15	29.48	14	4.35	19
Mus. inst'm'ts	107,598,824	66.08	33.92	16	32 34	19	1.58	5
W. shoes	130,493,076	65.99	34.01	17	30.56	18	3.45	16
M. shoes	34,433,816	65.71	34.29	18	29.65	15	4.64	21
Var. ($ limit)	4,040,223,119	65.27	34.73	19	25.57	8	9.16	25
Drug	999,609,985	63.40	36.60	20	32.39	20	4.21	18

Selected Portions of Plaintiff's Exhibit L—Continued

Table 3.—Major operating results, as percentages of net sales, arranged from low to high according to gross margin percentages, by kind of chain, all years combined.

Kind of Chain	Net Sales	Cost of Merchandise sold (percent)	Gross Margin (Percent)	Rank of Gross Margin	Operating Expense (Percent)	Rank of Operating Expenses	Net Operating Profit (Percent)	Rank of Net Operating Profit
M. furnishings	$42,719,692	62.46	37.54	21	36.79	21	.75	3
Hats & caps	72,267,974	60.04	39.96	22	40.38	24	[1].42	1
Millinery	135,410,409	54.95	45.05	23	42.69	25	2.36	7
M. & W. r'dy-to-wear	290,397,322	54.22	45.78	24	36.94	22	8.84	24
Furniture	234,010,319	51.37	48.63	25	37.17	23	11.46	26
Confectionery	300,940,452	50.85	49.15	26	43.11	26	6.04	23
Total	$25,490,500,172	72.59	27.41		22.96		4.45	

Total of ranks:

First quarter	[1]24½	[2]26½	[2].71
Second quarter	66½	73½	81
Third quarter	109	100	106
Fourth quarter	151	151	93
Total	351	351	351

[1] Net loss.

[2] Because of the odd numbers of items in each quarter, one-half of the rank for the middle item in each case has been added to the upper group and one-half of the lower group.

Kind of chain	1913[1]	1919	1922	1925	1927	1928	1929	1930	Average
Upward trend:									
Grocery	24.01	16.92	19.57	20.56	20.60	20.92	20.65	20.94	20.58
Meat	.....	16.35	20.30	21.12	22.03	21.51	23.64	24.50	22.41
Confectionery	56.21	29.52	46.59	48.18	48.05	50.43	50.04	49.91	49.15
M. r'dy-to-wear	.....	29.89	29.06	30.41	32.79	32.64	34.14	33.44	32.79
M. & W. r'dy-to-wear	40.36	42.09	40.97	44.20	46.09	46.05	47.67	47.34	45.78
M. furnishings	.....	35.97	34.70	36.96	37.98	39.05	38.02	36.76	37.54
M. shoes	.....	32.52	32.46	33.84	35.00	35.06	34.66	33.19	34.29
W. shoes	.....	26.83	32.20	32.48	33.36	33.88	34.60	34.86	34.01
M. & W. shoes	34.66	28.07	29.19	31.11	33.07	33.42	33.22	32.68	32.38
Downward trend:									
Drug	35.03	38.95	37.41	36.24	36.20	36.82	36.91	35.93	36.60
Tobacco	.....	32.95	31.57	29.67	29.58	30.74	29.27	24.97	29.23
Var. ($1 limit)	34.91	35.06	36.78	35.56	34.72	34.45	34.18	34.11	34.73
D. G. & apparel	24.40	26.85	27.44	27.07	26.47	26.46	26.03	25.01	26.18
Dept. store	32.03	35.41	33.43	33.05	32.66	31.83	32.20	31.37	32.18
Gen'l mdse	20.10	19.67	23.03	20.66	21.18	20.39	19.15	17.99	20.17
Mus. inst'm'ts	52.46	37.20	34.64	36.22	34.27	33.18	31.34	31.05	33.92
Indeterminate trend:[2]									
Gro. & meat	24.50	16.80	19.47	20.51	18.70	18.43	18.31	20.02	19.02
Var. ($5 limit)	.....	31.55	30.64	27.79	29.51	28.83	30.84	29.41	29.41
Var. (unlimited)	.....	25.15	25.44	26.53	23.11	30.55	33.10	24.37	27.67
W. r'dy-to-wear	34.24	34.27	32.40	33.64	34.30	34.68	33.79	33.06	33.83
W. accessories	.....	27.00	33.09	33.14	33.32	34.85	31.76	32.53	32.94
Hats & caps	.....	39.92	41.31	40.55	39.36	40.02	40.29	39.52	39.96
Millinery	.....	45.32	45.19	44.35	45.08	44.47	46.74	44.52	45.05
Dry goods	.....	.....	23.40	25.88	30.65	30.35	26.60	16.38	25.20
Furniture	48.62	50.77	46.01	47.64	48.84	49.00	49.50	48.34	48.63
Hardware	27.65	29.32	27.71	28.43	29.75	28.74	29.30	27.99	28.76
Average	31.28	27.00	28.76	29.00	27.39	27.06	26.94	27.04	27.41

[1] When establishing the upward, downward, and indeterminate trends over the years as used in the various sections of this report the figures for 1913 were disregarded because of the limited data reported for that year.

[2] Under the method used, a clearly horizontal trend, if any, would fall within the indeterminate group.

[fols. 853–854]

Table 11.—Percentages of operating expenses to sales, by kind of chain, for specified years.

Kind of chain	1913 [1]	1919	1922	1925	1927	1928	1929	1930	Average
Upward trend:									
Grocery	19.73	14.74	16.42	18.33	18.53	18.73	18.46	19.42	18.48
Meat	.....	14.58	18.06	18.78	19.72	18.98	20.75	22.26	19.96
Confectionery	23.61	23.36	39.50	40.86	41.46	44.25	43.24	46.61	43.11
Var. ($1 limit)	25.92	25.43	25.50	24.97	24.70	25.04	25.83	26.91	25.57
Var. ($5 limit)	.....	18.86	21.78	20.95	25.01	27.22	27.36	29.02	26.53
Var. (unlimited)	.....	21.81	20.18	23.86	20.19	26.15	29.77	33.39	27.44
M. r'dy-to-wear	.....	16.54	24.19	25.33	28.79	29.84	32.09	35.39	30.40
W. r'dy-to-wear	32.28	27.82	28.75	30.28	28.68	28.85	29.46	30.51	29.48
M. & W. r'dy-to-wear	38.71	28.70	33.33	35.18	37.20	36.08	37.22	42.14	36.94
M. furnishings	.....	26.28	32.43	33.82	36.70	37.90	37.53	41.51	36.79
W. accessories	.....	18.09	27.61	28.99	28.61	31.37	29.21	32.34	30.25
Hats & caps	.....	30.76	40.52	37.83	37.47	39.61	41.78	45.94	40.38
Millinery	.....	35.49	38.67	40.78	43.01	42.30	44.85	45.20	42.69
M. shoes	.....	26.92	27.15	27.83	31.15	31.02	28.12	30.67	29.65
W. shoes	.....	23.17	31.44	28.55	28.72	29.56	30.83	33.47	30.56
M. & W. shoes	28.74	20.85	25.02	26.52	29.22	29.47	30.12	32.66	29.21
D. G. & apparel	11.41	16.51	19.91	19.02	20.05	20.22	20.47	21.50	20.25
Dept. store	25.33	22.92	25.35	27.05	27.96	26.79	27.96	29.05	27.73
Furniture	36.74	29.31	31.75	34.42	35.80	35.81	37.97	46.58	37.17
Mus. inst'm'ts	43.92	28.37	27.93	31.25	33.39	31.81	31.48	42.63	32.34
Hardware	19.87	20.50	27.28	25.16	26.58	25.23	26.84	28.24	25.52

Downward trend:									
None.									
Indeterminate trend:[2]									
Gro. & meat	21.80	13.16	15.96	17.55	15.84	15.66	15.59	17.41	16.20
Drug	31.16	32.03	31.65	30.60	31.51	31.23	33.28	34.25	32.39
Tobacco	.....	29.04	26.18	24.94	26.23	28.59	28.97	24.40	26.55
Dry goods	.....	.....	17.72	21.60	27.64	27.34	24.10	23.40	24.05
Gen'l mdse	10.49	15.39	18.88	16.87	17.05	17.02	14.88	16.23	16.51
Average	24.45	20.00	22.38	23.38	22.63	22.42	22.83	24.15	22.96

[1] When establishing the upward, downward and indeterminate trends over the years as used in the various sections of this report the figures for 1913 were disregarded because of the limited data reported for that year.

[2] Under the method used, a clearly horizontal trend, if any, would fall within the indeterminate group.

[fols. 855-856]

Table 12.—Percentages of net operating profit to sales, by kind of chain, for specified years.

Kind of chain	1913 [1]	1919	1922	1925	1927	1928	1929	1930	Average
Upward trend:									
Meat	.....	1.77	2.24	2.34	2.31	2.53	2.89	2.24	2.45
Downward trend:									
Grocery	4.28	2.18	3.15	2.23	2.07	2.19	2.19	1.52	2.10
Gro. & meat	2.70	3.64	3.51	2.96	2.86	2.77	2.72	2.61	2.82
Drug	3.87	6.92	5.76	5.64	4.69	5.59	3.63	1.68	4.21
Tobacco	.....	3.91	5.39	4.73	3.35	2.15	.30	.57	2.68
Var. ($1 limit)	8.99	9.63	11.28	10.59	10.02	9.41	8.35	7.20	9.16
Var. ($5 limit)	.....	12.69	8.86	6.84	4.50	1.61	3.48	.39	2.88
Var. (unlimited)	.....	3.34	5.26	2.67	2.92	4.40	3.33	—9.02	.23
M. r'dy-to-wear	.....	13.35	4.87	5.08	4.00	2.80	2.05	—1.95	2.39
W. r'dy-to-wear	1.96	6.45	3.65	3.36	5.62	5.83	4.33	2.55	4.35
M. furnishings	.....	9.69	2.27	3.14	1.28	1.15	.49	—4.75	.75
W. accessories	.....	8.91	5.48	4.15	4.71	3.48	2.55	.19	2.69
Hats & caps	.....	9.16	.79	2.72	1.89	.41	—1.49	—6.42	—.42
Millinery	.....	9.83	6.52	3.57	2.07	2.17	1.89	—.68	2.36
M. & W. shoes	5.92	7.22	4.17	4.59	3.85	3.65	3.10	.02	3.17
Dry goods	.....	.....	5.68	4.28	3.01	3.01	2.50	—7.02	1.15
D. G. & apparel	12.99	10.34	7.53	8.05	6.42	6.24	5.56	3.51	5.93
Dept. store	6.70	12.49	8.08	6.00	4.70	5.04	4.24	2.32	4.45
Gen'l mdse	9.61	4.28	4.15	3.79	4.13	3.37	4.27	1.76	3.66
Furniture	11.88	21.46	14.26	13.22	13.04	13.19	11.53	1.76	11.46
Mus. inst'm'ts	8.54	8.83	6.71	4.97	.88	1.37	—.14	—11.58	1.58
Hardware	7.78	8.82	.43	3.27	3.17	3.51	2.46	—.25	3.24

Indeterminate trend:[2]									
Confectionery	32.60	6.16	7.09	7.32	6.59	6.18	6.80	3.30	6.04
M. & W. r'dy-to-wear	1.65	13.39	7.64	9.02	8.89	9.97	10.45	5.20	8.84
M. shoes	.....	5.60	5.31	6.01	3.85	4.04	6.54	2.52	4.64
W. shoes	.....	3.66	.76	3.93	4.64	4.32	3.77	1.39	3.45
Average	6.83	7.00	6.38	5.62	4.76	4.64	4.11	2.89	4.45

[1] When establishing the upward, downward, and indeterminate trends over the years as used in the various sections of this report the figures for 1913 were disregarded because of the limited data reported for that year.

[2] Under the method used, a clearly horizontal trend, if any, would fall within the indeterminate group.

[fols. 857-858]

Table 32.—Percentages of net operating profit to sales, by kind and size of chain, all years combined.

Kind of Chain	Number of Stores per Chain								
	2 to 5	6 to 10	11 to 25	26 to 50	51 to 100	101 to 500	501 to 1,000	1,001 and over	Average
Upward:									
Grocery	2.15	1.66	1.52	1.66	1.93	2.63	1.68	2.23	2.10
Gro. & meat	1.98	1.91	1.68	2.22	2.04	1.86	2.42	2.98	2.82
Var. ($1 limit)	2.81	3.20	6.17	6.58	4.49	8.60	9.75	10.47	9.16
D. G. & apparel	3.41	4.34	3.64	—.14	4.52	8.56	7.43	5.72	5.93
Confectionery	2.53	6.57	8.48	7.95	—1.44	11.21	.....	.....	6.04
W. shoes	.97	1.24	4.08	2.42	6.77	7.59	.....	.....	3.45
M. & W. r'dy-to-wear	6.62	8.00	13.85	7.58	17.06	.....	.....	.....	8.84
Mus. Inst'm'ts	1.22	—7.18	1.21	2.70	.....	.....	.....	.....	1.58
Gen'l mdse	3.20	3.30	4.66	.....	.....	.....	.....	.....	3.66
Downward:									
Dept. store	5.34	4.29	2.64	2.11	.....	6.14	—.96	.....	4.45
Var. ($5 limit)	2.59	4.37	2.35	4.12	—.23	.....	.....	.....	2.88
Var. (unlimited)	3.18	3.29	2.68	—4.78	.....	.....	.....	.....	.23
M. r'dy-to-wear	4.55	1.13	.90	1.06	.....	.....	.....	.....	2.39
Hats & caps	2.54	.....	—.65	—2.49	1.13	.....	.....	.....	—.42
Dry goods	2.43	.75	2.41	—7.43	.....	.....	.....	.....	1.15
Furniture	10.15	13.85	13.74	6.92	.....	.....	.....	.....	11.46

Indeterminate:[1]									
Drug	2.91	4.03	4.41	4.13	4.38	4.92	2.49	.....	4.21
Tobacco	1.37	.25	.30	1.34	—.32	3.79	.....	2.60	2.68
Meat	2.27	1.16	2.29	3.37	2.53	—1.04	.....	.....	2.45
W. r'dy-to-wear	2.53	5.71	3.12	5.56	4.97	4.37	.....	.....	4.35
Millinery	2.84	2.00	2.44	1.51	1.97	2.90	.....	.....	2.36
M. & W. shoes	4.95	1.63	2.55	2.86	.94	4.19	.....	.....	3.17
M. shoes	2.17	8.63	5.26	4.89	2.78	.....	.....	.....	4.64
Hardware	3.40	4.12	1.53	1.78	7.78	.....	.....	.....	3.24
M. furnishings	1.13	3.25	—.55	1.43	.....	.....	.....	.....	.75
W. accessories	3.97	2.81	1.63	4.91	.....	.....	.....	.....	2.69
Average	4.86	4.26	3.67	3.53	3.06	5.65	4.39	4.23	4.45

[1] Under the method used, a clearly horizontal trend, if any, would fall within the indeterminate group.

[fols. 859–860]

PLAINTIFFS' EXHIBIT Q

Operating Summary for Years 1929 to 1934, Inclusive

	1929	1930	1931	1932	1933	1934
Net Sales	7,668,867.32	6,878,063.15	6,529,414.00	4,974,378.58	4,870,663.86	4,949,553.04
Cost of Sales	5,235,452.92	4,640,529.99	4,377,004.06	3,403,390.61	3,162,160.63	3,313,407.34
Gross Profit	2,433,414.40	2,237,533.16	2,152,409.94	1,570,987.97	1,708,503.23	1,636,145.70
Operating Expense	2,669,919.77	2,304,882.27	2,209,537.74	1,870,691.37	1,779,300.27	1,792,030.98
Operating Profit	235,605.37*	67,349.11*	57,127.80*	299,703.40*	70,797.04*	155,885.28*
Income or Loss* from Leased Departments	6,685.60	43.65*	1,428.21*	931.67	3,962.59*	3,134.26
Other Expense—Less Other Income	130,116.84	109,738.21	101,442.99	90,492.76	83,641.76	84,732.31
Net Profit Before Deducting Federal Taxes and Chain Store Tax	98,802.93*	42,345.45	42,886.98	208,278.97*	8,882.13	68,018.71*
Provision for Federal Tax	.....	5,081.23	5,146.44	.....	.....	.....
Net Profit or Loss* for Fiscal Year Ending January 31st	98,802.93*	37,264.22	37,740.54	208,278.97*	8,882.13	68,018.71*
Percent Profit or Loss* to Sales	1.26*	0.51	0.55	3.97*	0.17	1.30*

* Red in copy.

[fols. 861-862] PLAINTIFFS' EXHIBIT Y

% To Sales Year 1934

Profit or (Loss*)

10 Best Departments

No.	Department	%
23	Notions	9.0
37	Hosiery	5.4
35	Gloves	4.4
51	Women's Coats and Suits	4.4
38	Knit Underwear	3.8
13	Wash Goods	3.6
81	Pictures	3.6
84	Radios	3.6
31	Neckwear	3.5
59	Furs	3.3

10 Poorest Departments

No.	Department	%
55-j	Girls' Wear	26.2*
92	Sporting Goods	25.3*
16	Patterns	19.1*
66	Boys' Wear	16.9*
48	Children's Shoes	15.6*
53	Women's Dresses	12.2*
61	Men's Clothing	11.1*
26	Umbrellas	10.4*
28-B	Books & Magazines	10.3*
52-A	Aprons & House Dresses	9.9*

* Red in copy.

[fols. 863–864]

PLAINTIFFS' EXHIBIT "Z"

Store	1934 Volume	Net Profit	%	Position Volume	Position Net Pft. %
Independent Dep't Stores:					
Abraham & Straus	$20,228,682	$526,596	2.6	8	10
Arnold Constable Corp'n	6,440,321	180,467	2.8	18	9
Bamberger, L. & Co.	28,324,569	368,001	1.3	3	21
Bloomingdale Bros., Inc.	21,848,061	416,437	1.9	5	15
Broadway Dep't Store, Inc.	13,726,429	d. 5,005	0.03(d)	13	27
Bullock's Inc.	20,422,685	796,893	3.9	7	7
Burdine's Inc.	3,940,507	180,529	4.6	24	5
Crawley, Milner & Co.	12,142,039	14,575	0.1	15	25
Emporium Capwell Corp'n	20,436,167	416,401	2.0	6	13
Filene's (Wm.) Sons Co.	32,178,156	550,556	1.7	2	17
Franklin Shops, Inc.	1,307,040	41,506	3.2	30	8
Gilchrist Co.	6,271,549	d. 17,109	0.3(d)	19	23
Horne (Joseph) Co.	12,918,800	646,686	5.0	14	3
Kahn Dep't Stores, Inc.	2,830,793	35.000	1.2	25	22
Kaufmann Dep't Stores, Inc.	18,465,293	818,793	4.4	9	6
Kresge Dep't Stores, Inc.	4,223,129	85,993	2.0	22	14
Lazarus (F. & R.) & Co.	14,868,624	802,096	5.3	12	2
Leader Mercantile Corp.	1,697,725	27,994	1.6	28	18
Macy, R. H. & Co.	118,211,078	2,926,705	2.5	1	11
Mandel Bros., Inc.	15,518,512	d. 297,109	1.9(d)	11	30
Namm, (A. I.) & Son	9,563,954	d. 61,129	0.6(d)	16	28
Northwest Dep't Stores, Inc.	1,499,700	29,223	1.9	29	16
O'Connor, Moffatt & Co.	4,010,546	d. 41,099	1.0(d)	23	29
Olds, Wortman & King, Inc.	2,422,142	4,040	0.2	26	24

Outlet Co.	7,778,494	477,710	6.0	17	1
Rike-Kumler Co.	4,868,141	241,093	4.9	21	4
Strawbridge & Clothier	23,243,824	331,886	1.4	4	19
The Fair	17,769,983	252,423	1.4	10	20
Twelfth Street Store	2,186,326	2,525	0.1	27	26
Weil (Raphael) & Co.	5,594,465	119,332	2.1	20	12
Chain Department Stores:					
Associated Dry Goods Corp.	47,660,757	937,908	1.9	7	7
City Stores Co.	32,088,321	d. 524,329	1.6(d)	8	14
Consolidated Dry Goods Co.	3,114,514	d. 40,357	1.3(d)	15	13
Federated Dep't Stores, Inc.	89,123,523	1,148,349	...	3	10
Gimbel Bros., Inc.	77,155,346	347,586	0.4	6	12
Goldblatt Bros., Inc.	28,509,915	1,067,315	3.7	9	4
Hahn Dep't Stores, Inc.	82,075,720	1,127,331	1.4	5	8
Hale Bros. Stores, Inc.	13,902,188	186,891	1.3	12	9
Interstate Dep't Stores, Inc.	23,585,656	474,087	2.0	10	6
Lincoln Stores, Inc.	3,570,871	144,275	4.0	14	2
Marshall Field & Co.	100,795,098	d. 166,295	...	2	..
May Dep't Stores Co.	86,795,995	3,301,614	3.8	4	3
J. C. Penney Co.	212,053,361	16,147,315	7.6	1	1
Schlesinger (B. F.) & Sons	6,752,635	68,263	1.0	13	11
Wieboldt Stores, Inc.	19,511,273	404,822	2.1	11	5

[fols. 865–866]

PLAINTIFFS' EXHIBIT B-B (First Page)

Condensed Operating Statement for the Fiscal Year Ended January 31st.

	1930	1931	1932	1933	1934	1935
Net Sales	$6,999,636	$6,397,332	$5,769,854	$4,634,195	$4,544,489	$4,868,295
Cost of Sales	5,032,341	4,251,564	3,923,937	3,180,005	3,002,134	3,182,068
Gross Profit	1,967,295	2,145,768	1,845,917	1,454,190	1,542,355	1,686,227
Operating Expense	2,951,705	2,749,519	2,527,442	2,116,796	1,945,074	1,957,352
Operating Profit	984,410*	603,751*	681,525*	662,606*	402,719*	271,125*
Other Expense less Other Income	21,230*	56,816	47,403	16,290*	49,507*	60,542
Net Operating Profit Before Deducting Chain Store Tax	1,005,640*	546,935*	634,122*	678,896*	452,226*	210,583*
%	14.37*	8.55*	10.99*	14.65*	9.95*	4.32*
Income from Leased Departments	$61,150	$114,842	$96,368	$94,810	$73,619	$65,663
Net Profit	944,490*	432,093*	537,754*	584,086*	378,607*	144,920*
%	13.49*	6.75*	9.32*	12.60*	8.33*	2.98*

* Red in copy.

[fol. 867] DEFENDANT'S EXHIBIT No. 3

National Tea Co.
Chicago, Illinois

May 17, 1931.

Mr. O. H. Landin,
National Tea Company,
2837 Third Avenue, South,
Minneapolis, Minnesota.

DEAR MR. LANDIN:

The enclosed check amounting to $185.01 covers the following:

$30.19 covers confidential allowance from Hills Brothers for which statement from them is enclosed. The allowance for Duluth has not come in and we are taking it up with Hills Bros. direct from this office.

$154.82 covers a very confidential deal and is a credit to Unapplied Credits, Dept. No. 2.

If there is any question on the above will you write me direct please.

Very truly yours, National Tea Co., By M. May.

[fol. 868] Branch Office Credit Bill

The Hills Brothers Company
110 Washington Street
New York, N. Y.

Acct. No. 223 Date
To National Tea Co. 4/16/1931
Address Minneapolis, Minnesota.

Quan.	Unit	Item	Price	Amount	Cost
		Special Quarterly Allowance of 2½% on Purchases of Dromedary Dates from Jan. 1, 1931, to March 31, 1931.			
		36 CS. Drom. Pitted Dates 36/			
		174 CS. Drom. Regular Dates 36/			
Total 210	CS.	at 5.75	1,207.50	2½% 30.19	

Duplicate

[fol. 869] DEFENDANT'S EXHIBIT 4

National Tea Co.
Chicago, Illinois

March 6th, 1930

Mr. O. H. Landin,
National Tea Co.,
2837 Third Avenue, South,
Minneapolis, Minn.

DEAR MR. LANDIN:

We are enclosing herewith our check in the amount of $25,000.000 which we have charged to your loan account. We are unable to send you the $50,000.00 which you asked for in your wire, and suggest that if you are able to borrow an additional $25,000.00 in Minneapolis at 5¼% or better, have the notes made out up there and forward to this office for the additional signature.

If you are unable to borrow at that rate in Minneapolis, advise us and we will make a loan for you in Chicago.

I am sorry that we are unable to send you $50,000.00 which you asked for, but it is impossible this late in the day.

Yours very truly, National Tea Co., W. E. Runell, Comptroller.

WER:MW.
Encl.

[fol. 870] DEFENDANT'S EXHIBIT 5

National Tea Co.
Chicago, Illinois

November 18, 1931

Mr. O. H. Landin,
National Tea Co.,
2837 Third Ave., So.,
Minneapolis, Minn.

DEAR SIR:

We are enclosing herewith National Tea Co. merchandise checks as follows:

#76	Scott Paper (September)	$ 16.63
#76	Kraft - Phenix (October)	120.44

Thompson's Malted (7-1 to 9-30)	9.80
Wrigley (October)	33.69
Wm. Underwood (August)	3.20
General Mills (Gold Medal, 7-1 to 9-30)	87.02

If any of these are incorrect kindly inform us.

Yours very truly, National Tea Co., M. R. Sturgeon.

MRS.

[fol. 871] DEFENDANT'S EXHIBIT 6

National Tea Co.,
Chicago, Illinois

September 15, 1923

Mr. Landin,
National Tea Co.,
1224 Quincy Street,
Minneapolis, Minn.

DEAR SIR:

Mr. Rasmussen has referred to the matter of Chipso Soap Flakes, informing us you have a contract, which must be ordered out in the near future, for 1,000 cases, on the initial order basis, namely, one free with five.

We are attempting to have the Chicago organization obtain consent from the main office to allow us to take advantage direct through Chicago stock instead of paying the freight back from Minneapolis. This, however, would take three or four days to receive a definite reply. We presume that the matter of ordering out your contract can be delayed this long. If it should be impossible to delay ordering this out, we are prepared to have a car forwarded to us in proportion of four #32 (30's) to one #12 (80's) consigned to us, care of the C. M. & St. P. R. R. Kinzie St. Station. The minimum car is 36,000 pounds, carload rate .305.

Kindly let us know in advance just what you are doing in regard to same.

Yours very truly, National Tea Co., F. H. Massmann,
Vice President.

FHM/JD

[fol. 872] DEFENDANT'S EXHIBIT 7

National Tea Co.
Chicago, Illinois

June 1, 1928

Mr. O. H. Landin,
%National Tea Co.,
2837 Third Avenue,
Minneapolis, Minn.

DEAR MR. LANDIN:

We wired you with reference to sugar last week, but not hearing from you we talked over the long distance telephone with Mr. Green. He informed us that you would want two cars of cane and one car of beet sugar per week for a period of about sixty days.

We are servicing our stores here on a basis of half beet and half cane and thought possibly you could go on this same basis as you used more beet sugar last year than you did cane. However, we will take care of you on whatever basis you finally decide.

We made a purchase of cane and beet sugar on the day that we wired you and decided to average our prices on all sugars that we had contract for, and we established our average cost on cane sugar at $5.96 basis and beet at $5.60 basis. The freight rate on cane will be .577 or better. We haven't established the rate as yet, but will give you the best rate we are able to get. The rate on beet will be .603, but if there is a better rate during the season you will naturally get the benefit of it.

[fol. 873] On all beet sugars shipped May 21st and thereafter we will bill it to you on a basis of $5.60 until both contracts are used up. Kindly advise us how soon you will want cane sugar. You understand that cane sugar will be billed on a basis of $5.96 and beet on a basis of $5.60.

Yours very truly, National Tea Co. By: O. C. Mattem.

OM:GJ

DEFENDANT'S EXHIBIT 8

National Tea Co.
Chicago, Illinois

March 23rd, 1929

CONFIDENTIAL.
Mr. O. H. Landin,
National Tea Co.,
2837 Third Avenue, South,
Minneapolis, Minn.

DEAR SIR:

Kindly find enclosed check of $753.55 representing a confidential discount allowed by the Diamond Match Company, representing the purchases made by your branch from October 1st to December 31st, inclusive. This check adjusts the billing price on such purchases.

Yours very truly, National Tea Co., J. Doud.

[fol. 874] DEFENDANT'S EXHIBIT 9

National Tea Co.
Chicago, Illinois

February 25th, 1931

Mr. O. H. Landin,
National Tea Co.,
2837 Third Avenue, South,
Minneapolis, Minn.

DEAR SIR:

The enclosed check of $275.14 represents confidential discounts from the Wrigley Company for $26.95 and from the Lipton Co., Inc.—the former for the month of January, and the latter covering the entire year 1930.

If there is any question regarding the above, please advise the writer.

Yours very truly, National Tea Co. By: J. Doud.

[fol. 875] DEFENDANT'S EXHIBIT 10

National Tea Co.
Chicago, Illinois

April 7, 1931

Mr. O. H. Landin,
National Tea Co.,
2837 Third Avenue, South,
Minneapolis, Minn.

DEAR MR. LANDIN:

The enclosed check for $244.28 covers your confidential allowance on January and February purchases from the Kraft-Phenix Cheese Company. They show your January purchases for cheese $2,802.45, for mayonnaise $1,189.21 and February cheese $2,957.45, mayonnaise $1,194.08.

If there is any further information desired please communicate with me.

Yours very truly, National Tea Co. By: M. E. May.

[fol. 876] DEFENDANT'S EXHIBIT 12

National Tea Co.
Chicago, Illinois

March 23rd, 1929

Mr. O. H. Landin,
National Tea Co.,
2837 Third Avenue, South,
Minneapolis, Minn.

DEAR SIR:

Kindly find enclosed check for $144.37 representing the allowance due your branch for purchases from the Fleischmann Company during the month of February.

Yours very truly, National Tea Co. By: J. Doud.

[fol. 877] DEFENDANT'S EXHIBIT 12-a

National Tea Co.
Chicago, Illinois

October 16th, 1929

Mr. O. H. Landin,
National Tea Co.,
2837 Third Avenue, South,
Minneapolis, Minn.

DEAR SIR:

The enclosed check of $118.73 represents the confidential allowance made to your branch covering purchases for August from the Fleischmann Company.

Yours very truly, National Tea Co. By: J. Doud.

[fol. 878] DEFENDANT'S EXHIBIT 12-b

National Tea Co.
Chicago, Illinois

March 28th, 1931

Mr. O. H. Landin,
National Tea Co.,
2837 Third Avenue, South,
Minneapolis.

DEAR SIR:

The check enclosed, amounting to $146.73, represents the allowance made by Fleischmann Company for your unit's puchases during February, amounting to

50 lbs. of yeast,
57,094 pcs. of yeast.

If there is any question relative to the enclosed check please communicate with the writer.

Yours very truly, National Tea Co. By: J. Doud.

[fol. 879] DEFENDANT'S EXHIBIT 12-c

National Tea Co.
Chicago, Illinois

June 4, 1931

Mr. O. H. Landin,
National Tea Co.,
2837 Third Avenue, South,
Minneapolis, Minn.

DEAR MR. LANDIN:

The two checks enclosed, one for $129.38 and the other for $5.50 are to cover confidential allowance made by Fleischmann Company for your unit's purchases during April.

If there is any question relative to the enclosed checks please communicate with the writer.

Very truly yours, National Tea Co. By: M. May.

[fol. 880] DEFENDANT'S EXHIBIT 12-d

National Tea Co.
Chicago, Illinois

July 14, 1931

Mr. O. H. Landin,
National Tea Co.,
2837 Third Avenue, South,
Minneapolis, Minn.

DEAR MR. LANDIN:

The enclosed check covers confidential allowance from Fleischmann for your unit's purchases for the month of May. It is in the amount of $121.78.

If there is any question will you please communicate with me.

Very truly yours, National Tea Co. By: M. May.

[fol. 881] DEFENDANT'S EXHIBIT 13

National Tea Co.
Chicago, Illinois

June 26, 1931

Mr. O. H. Landin,
National Tea Co.,
2837 Third Avenue, South,
Minneapolis, Minn.

DEAR MR. LANDIN:

The enclosed check in the amount of $9.19 covers confidential allowance from Scott Paper Co. for the month of May. They show your unit's purchases amounting to $183.75.

If there is any question in regard to this check will you communicate with me.

Very truly yours, National Tea Co. By: M. May.

[fol. 882] DEFENDANT'S EXHIBIT 14

National Tea Co.
Chicago, Illinois

June 12, 1931

Mr. O. H. Landin,
National Tea Co.,
2837 Third Avenue, South,
Minneapolis, Minn.

DEAR MR. LANDIN:

We are enclosing two checks, one in the amount of $26.95 and the other in the amount of $240.00.

The check for $26.95 covers your unit's purchases from Wm. Wrigley Co. during the month of May—confidential allowance.

The check for $240.00 covers your unit's portion of a very confidential deal and is a credit to Unapplied Credits, Dept. #43.

If there is any question will you please communicate with me.

Very truly yours, National Tea Co. By: M. May.

[fol. 883] DEFENDANT'S EXHIBIT 14-A

National Tea Co.
Chicago, Illinois

April 14, 1931

Mr. H. O. Landin,
National Tea Co.,
2837 Third Avenue, South,
Minneapolis, Minn.

DEAR MR. LANDIN:

The enclosed check for $33.69 represents a confidential allowance from the Wm. Wrigley Co. for your unit's purchases during the month of March.

If there is any question relative to this check will you please communicate with me direct.

Very truly yours, National Tea Co. By: —°—.

[fol. 884] DEFENDANT'S EXHIBIT 14-B

National Tea Co.
Chicago, Illinois

May 22, 1931

Mr. H. O. Landin,
National Tea Co.,
2837 Third Avenue, South,
Minneapolis, Minn.

DEAR MR. LANDIN:

The enclosed check for $33.69 represents a confidential allowance from the Wm. Wrigley Co. for your unit's purchases during the month of April.

If there is any question relative to this check will you please communicate with me direct.

Very truly yours, National Tea Co. By: M. May.

[fol. 885] DEFENDANT'S EXHIBIT 15

National Tea Co.
Chicago, Illinois

November 25th, 1929

Mr. O. H. Landin,
National Tea Co.,
2837 Third Avenue, South,
Minneapolis, Minn.

DEAR SIR:

Please find enclosed, the following checks representing confidential allowances:

Check of $17.25, from Hills Brothers Company, covers special allowance on purchases made from April 1st, 1929, to June 30th, 1929, inclusive.

Check of $7.13, from Campfire Corporation, covers special allowance on purchases made from October 1st to 30th, inclusive.

Check of $15.75, from John F. Jelke Company, covers special allowance on purchases made from September 1st to 30th, inclusive.

Yours very truly, National Tea Co. By: J. Doud.

[fol. 886] DEFENDANT'S EXHIBIT 16

National Tea Co.
Chicago, Illinois

November 25th, 1929

Mr. O. H. Landin,
National Tea Co.,
2837 Third Avenue, South,
Minneapolis, Minn.

DEAR SIR:

Kindly find enclosed, check of $65.69, which represents the allowance due your branch for its purchases from the Pompeian Romanza Company for period from January 1st to June 30th, inclusive.

This is on a five per cent basis as you already know.

Yours very truly, National Tea Co. By: J. Doud.

[fol. 887] DEFENDANT'S EXHIBIT 17

National Tea Co.
Chicago, Illinois

February 6th, 1931

Mr. O. H. Landin,
National Tea Co.,
2837 Third Avenue, South,
Minneapolis, Minn.

DEAR MR. LANDIN:

I am enclosing, herewith, check for $268.94 which represents confidential allowances for your unit from the Companies and for the periods as designated:

$	19.00	Fuji Trading Company--Oct., Nov. and Dec.
*	8.55	Price Flavoring Extract Company—Oct., Nov. and Dec.
**	3.07	Price Flavoring Extract Company—Oct. Nov. and Dec.
	142.74	Fleischmann Company—December.
	66.78	Washburn Crosby Co.—Oct., Nov. and Dec.
	28.80	Wheatena Company—Year 1930.
	$268.94	Total.

* For the Minneapolis and St. Paul District.
** For Duluth territory.

Yours very truly, National Tea Co. By: J. Doud.

[fol. 888] DEFENDANT'S EXHIBIT 18

National Tea Co.
Chicago, Illinois

February 2nd, 1931

Mr. O. H. Landin,
National Tea Co.,
2837 Third Avenue, South,
Minneapolis, Minn.

DEAR SIR:

Please find enclosed the checks as listed below, covering confidential allowances for the periods as shown, and from the Companies designated:

$ 28.30 represents allowance on the Wrigley Company purchases for December.

50.85 represents Washburn Crosby Co. cake flour allowance, their crediting your branch with purchases of 113 cases during November.

253.05 is the allowance made by Kraft Cheese Company for the months of October and November; they show figures as follows:

(October) $2897.49 for cheese $1,048.35 for Mayonnaise.

(November) $3,081.07 for cheese $1,407.83 for Mayonnaise.

If there is any question relative to the above, please advise us, and we shall take up the matter.

Yours very truly, National Tea Co. By: J. Doud.

[fol. 889] DEFENDANT'S EXHIBIT FROM PLAINTIFF'S EXHIBIT L. LETTER OF SUBMITTAL. FEDERAL TRADE COMMISSION

Washington, D. C., April 22, 1933.

To the Senate of the United States:

This report is submitted in response to Senate Resolution 224, Seventieth Congress, first session, as a partial report upon the financial and operating results of chain-store organizations. That resolution called upon the Commission to report upon "the advantages or disadvantages of chain-store distribution * * * as shown by prices, costs, profits, and margins * * *" and "how far the rapid increase in the chain-store system of distribution is based upon actual savings in costs of management and operation * * *."

This report is designed to present sales, costs, profits, and other related factors for 1,337 chain-store companies with over 62,000 stores in the year 1930. The years covered by the study are eight in number: 1913, 1919, 1922, 1925, 1927, 1928, 1929, and 1930. The operating data are presented by years and kinds of chains, showing the general trends over the period and comparisons of sales, costs, profits, and other factors for companies operating different numbers of stores. Data on investments in the chain-store business and the rates of return upon their invested capital are reserved for a subsequent report.

The aggregate results of operations over this period of years involved net sales of more than $25,490,000,000 distrib-

[fol. 890] uted among 26 different kinds of chains. The aggregate cost of merchandise sold was over $18,503,000,000.

The resulting gross profit amounting to more than $6,987,000,000 was divided between operating expenses of a little less than $5,854,000,000 and the net operating profit of approximately $1,133,000,000. Expressed in terms of percentages of sales, these results show cost of merchandise sold, 72.59 percent, gross profit of 27.41 percent, operating expenses of 22.96 percent and net operating profit of 4.45 percent.

Concentration of Chain-Store Business

From the standpoint of the number of companies involved the following lines of business are the most important: grocery, grocery and meat, drug, dollar-limit variety, women's ready-to-wear, men's and women's shoes and dry goods and apparel. From the standpoint of the number of stores, the same commodity types have very nearly the same degree of importance. Considering only the number of stores, the tobacco chains also assume a place among the more important groups because of the large number of stores operated by the two largest tobacco chains.

The volume of business, or aggregate net sales, presents a somewhat different picture. Five kinds of chains show aggregate eight years' sales of more than a billion dollars each. The grocery and meat chains report sales of over $8,799,000,000 and the department store chains, over $4,400,[fol. 891] 000,000. The dollar-limit variety chains sold merchandise in excess of $4,000,000,000, grocery chains more than $2,000,000,000, and dry goods and apparel chains a little more than $1,000,000,000. These five commodity types, with aggregate sales of $20,599,519,801 account for about 81 percent of the total sales of the 26 kinds of chains.

Average Sales Per Store

The difference in the average sales per store between various kinds of chains are naturally great. Whereas the 8-year average for all reporting chains was $87,476 per store, the range of the all-year figures by kind of chains was from $41,951 per store for unlimited-price variety chains to $1,671,815 per store for department stores.

A group of eight kinds of chains (drug, confectionery, dry goods and apparel, men's ready-to-wear, dollar-limit variety, women's ready-to-wear, musical instruments, and furniture) shows annual average sales per store ranging from $117,809 to $308,111. The food chains average $34,387 for the grocery, $55,742 for the grocery and meat, and $74,567

per store for the meat business. Tobacco chains report annual sales averaging $66,485 per store and the remaining 12 commodity types range between $42,000 and $100,000 per store.

The average sales per store shown in this report differ from those shown in the Commission's repo on Gross Profit and Average Sales per Store of Retail Chains because the [fol. 892] present report usually includes the wholesale business of the chains, while the report on gross profits covers only retail store sales. Moreover, the number of companies and the number of years included in the present study are both less than in the previous report on gross profits.

Six kinds of chains, including the grocery and meat and tobacco chains, show a definite upward trend of sales per store over the years 1919 to 1930. Thirteen kinds of chains have decidedly downward trends in average sales per store. This group includes men's and women's ready-to-wear, drug, the three kinds of shoe chains, and the department store chains. The remaining seven commodity types, including grocery, meat, and dollar-limit variety chains show no particular trend, their average sales per store remaining fairly constant.

In the case of six kinds of chains, including the dollar-limit variety and drug chains, there is a somewhat pronounced tendency for average sales per store to increase with an increasing number of stores per chain. Fifteen more of the 26 commodity types show the reverse tendency, sales per store decreasing with increases in the number of stores. In these 15 are the grocery, grocery and meat, confectionery, the three shoe groups, and the department store chains. Five kinds of chains, including dry goods and apparel and tobacco, show no particular relation between the average sales per store and the size of the chain as measured by number of stores.

[fol. 893] Cost of Merchandise Sold

The cost of merchandise sold for the 26 kinds of chains for all years is 72.59 percent of sales. The range, as between the different kinds of chains in the all-year figures, is from 80.98 percent of sales for the grocery and meat chains to 50.85 percent for the confectionary chains.

The highest percentages of cost of merchandise sold in any one of the 8 years occur in 1919 for the grocery, grocery and meat, meat, women's shoe, men's and women's

shoe, confectionery, and women's accessories chains and in 1930 for general merchandise, tobacco, dry goods, department store, dollar-limit variety, and musical instrument chains. As distinguished from these, the tobacco, $5-limit variety, drug, department store, and furniture groups show their lowest cost percentages in 1919, while the meat and women's shoe groups show their lowest percentages in 1930.

Seven kinds of chains (drug, tobacco, dollar-limit variety, dry goods and apparel, department store, general merchandise, and musical instruments) show upward trends in the percentage of cost of merchandise during the period of 1919 to 1930, the tobacco chains showing the greatest increase in this percentage (from 67.05 percent in 1919 to 75.03 in 1930).

Nine kinds of chains have decreasing trends in the percentages of costs of merchandise sold. This group comprises grocery, meat, confectionery, men's ready-to-wear, men's and women's ready-to-wear, men's furnishings, [fol. 894] men's shoes, women's shoes, and men's and women's shoes. The widest difference in cost percentages occurs in the confectionery chains between 1919 and 1928, the cost for the latter year decreasing to 49.57 percent from 70.48 percent in the former. The women's shoe chains are the only ones with constantly decreasing percentages (from 73.17 percent in 1919 to 65.14 percent in 1930). The remaining 10 kinds of chains fail to show any definite trend and the variations among the years were comparatively small.

The classification of the various kinds of chains by the number of stores operated shows the percentage of cost of merchandise sold increasing as the size of the chain increases for 10 kinds of chains; dry goods and apparel, men's and women's shoes, department store, men's shoes, men's ready-to-wear, hats and caps, dry goods, furniture, musical instruments, and general merchandise. Eleven kinds of chains, which include several of the most important types, such as grocery, dollar-limit variety, drug and tobacco, show a tendency for the cost of merchandise percentages to decline with the increase in the size of the chain, as measured by the number of stores.

Five kinds of chains are classified as indeterminate (showing no upward or downward trend). Included in these are the grocery and meat and the meat chains, both of which show very stable cost percentages throughout all of the size groups.

Gross-profit percentages are not considered in detail in this report in view of the exhaustive treatment of the sub-[fol. 895] ject in the Commission's report, Gross Profit and Average Sales per Store of Retail Chains. It should be noted, however, that such percentages are the inverse of those for the cost of merchandise sold. Attention is also directed to the fact that the gross-profit percentages in this report differ in many instances from those shown in the report on gross profits, due to differences in the number of companies and years covered and to the inclusion in this report of wholesale business done by the chains.

Operating Expenses of Chains

The average percentage of operating expenses to sales for chains of all 26 commodity types combined is 22.96 percent, the range varying from 16.20 percent for grocery and meat chains to 43.11 percent for confectionery chains. Only five kinds of chains (grocery and meat, general merchandise, grocery, meat, and dry goods and apparel) have operating expense percentages below the average. The grocery and meat and the grocery chains, which together report a little more than 43 percent of the total sales, are largely responsible for the low average operating expense percentages, their individual averages being, respectively, 16.20 and 18.48 percent.

It is rather significant that the percentages of operating expenses to sales from 1919 to 1930 show decided upward trends in all kinds of chains except grocery and meat, drug, tobacco, dry goods, and general merchandise, these being rather indeterminate so far as the question of trend is con-[fol. 896] cerned. No kind of chain reflected a downward trend of these percentages for the period covered. Only two kinds of chains (tobacco and dry goods) show operating expense percentages for 1930 below those for 1929.

There are indications that the size of the chain, as measured by number of stores, has some relationship to operating expense percentages. Eight kinds of chains show decided tendencies for these percentages to increase with increased size of chains. This group includes grocery and drug chains. Seven other kinds of chains show marked downward tendencies in operating expense percentages with increases in number of stores, among them being the dry goods and apparel, men's and men's and women's shoe chains. Grocery and meat, dollar-limit variety, and tobacco

chains fall into an indeterminate group, together with eight other commodity types of less importance.

Net Operating Profit

On account of the dissimilarity in operating conditions, there are wide variations in the percentages of net operating profit to sales realized by different kinds of chain-store business. Only one group of chains (hats and caps) has a net operating loss in the composite figures for all years combined. The furniture chains show the highest rate of profit to sales—namely, 11.46 percent—while the average for all types combined is 4.45 percent. Only six kinds of chains show operating profit percentages above the average. [fol. 897] The department store chains show a rate of profit on sales equal to the average for all 26 kinds of business for all years combined.

The percentages of net operating profit to sales for the different kinds of chains apparently reflect in a large measure the general economic conditions of the respective years. Of the 14 types reporting for 1913 only 4 (grocery, dry goods and apparel, general merchandise, and confectionery) had higher rates of net operating profit than in the year 1919. The year 1919 was one of high prices and war-time inflation and 15 of the types reported their highest rates in that year.

Generally the rates of net operating profit were downward over the years, only one kind of business (meat) showing an upward trend, four others being indeterminate. The remaining 21 kinds of chains had a decided falling off in their rates for the period.

The figures for the year 1930 reflect the business conditions of that year, eight of the commodity types (unlimited-price variety, men's ready-to-wear, men's furnishings, hats and caps, millinery, dry goods, musical instruments, and hardware) showing net operating losses. All types of chains show lower rates of operating profits or larger operating losses in 1930 than in 1929, except the tobacco chains which reported higher rates of profit for 1930 than 1929. In both of these years, however, the rates of profit of the tobacco chains were far below those of any year reported from 1919 to 1928.

[fol. 898] Considered from the standpoint of the size of chains, as measured by the number of stores, it is found that nine kinds of chains (grocery, grocery and meat, dollar-limit variety, dry goods and apparel, confectionery,

women's shoes, men's and women's ready-to-wear, musical instruments, and general merchandise) show marked tendencies for the rate of net operating profits to sales to increase with increases in the size of the chain. Seven of these show the highest percentages in the largest size group, the exceptions being grocery and dry goods and apparel chains. There are seven kinds of chains showing an inverse relation of size and percentage of profit. It should be noted, also, that five types (department store, $5-limit and unlimited-price variety, dry goods, and furniture) show the lowest rates of net operating profit or greatest losses in their largest size groups. The remaining 10 kinds of chains show no clear upward or downward tendencies.

Losses From Chain-Store Operations

The net operating losses reported for the entire period include some companies in each of the 26 kinds of chains and represent 1,078 company-years, 21,382 store-years, and aggregate sales of $1,516,427,068, upon which the losses totaled $43,934,074.

In all of the 26 kinds of chains, except the unlimited-price variety, the company-years showing losses equaled more than 10 percent of the total company-years reported, [fol. 899] and in like manner, except for the grocery, grocery and meat, dollar-limit variety, and dry goods and apparel chains, the store-years showing losses equaled over 10 percent of the total store-years reported by all the companies. The musical instrument chains reported the largest proportions of company- and store-years with operating losses (over 40 percent of the company- and over 35 percent of the store-years). The hat and cap and men's furnishings chains show the highest proportion of sales (over 30 percent in each case) on which operating losses were sustained. In all but seven groups (dollar-limit variety, grocery and meat, dry goods and apparel, grocery, drug, department store, and furniture) over 10 percent of the total sales represented are those of chains reporting losses. The aggregate losses for the loss-sustaining chains average more than $40,000 per company-year or slightly more than $2,000 per store-year.

The percentages of cost of merchandise sold are usually higher for the groups of chains reporting losses in each kind of business than for the all-company groups. The percentages of operating expenses to sales are also higher for the companies reporting losses than for all companies

in each of the 26 kinds of business. The differences range from the high of 13.88 points in percentage for the furniture chains, where the operating expenses of the companies having losses are 51.05 percent as compared with an all-company percentage of 37.17, to the low of only 0.15 points percent for the dry goods group, where the operating ex-
[fol. 900] penses of the chains reporting losses are 24.20 percent and those of the all-company group are 24.05 percent.

Moreover, chains reporting losses generally show a lower inventory turnover rate than the all-company rate. In only 2 of the 26 kinds of chains, meat and tobacco, is the average number of stock turns of the loss sustaining chains greater than the respective all-company figures. The percentages of net operating losses for the various kinds of chains range from a high of 14.11 percent of sales for the unlimited-price variety group to only 0.70 percent for the tobacco group, with a composite average for all types of 2.90 percent.

Influence of Size of Chains

In the case of several kinds of chains, the tendencies of the operating results by size of chain seem sufficiently definite to afford an explanation of the net operating profit figures.

1. In five kinds of business (grocery, grocery and meat, confectionery, men's and women's ready-to-wear, and women's shoes), there is a tendency for the sales per store to decrease with the size of the chain (as measured by the number of stores) although the rate of net operating profit tends to increase. In four of these lines (grocery, confectionery, men's and women's ready-to-wear and women's shoes) the percentage of costs of merchandise sold also tends to decrease with the size of chain or, expressed from the standpoint of profit, the percentage of the gross profit tends to increase as the size of the chain increases. In 3 of
[fol. 901] these 5 groups (grocery, confectionery, and men's and women's ready-to-wear) there is, moreover, a tendency for operating expense percentages to increase with the size of the chain. One explanation of the higher percentage of net operating profit to sales for these chains, therefore, is to be found in the fact that the percentage of gross profit has tended to widen with the increased size of the chain to an extent sufficient to more than offset the tendency both for operating expense percentages to increase and for sales per

store to decrease with increases in size of chain. In 2 of the 5 groups (men's and women's ready-to-wear and women's shoe chains), the tendency toward higher percentages of net profit on sales for the larger chains is also influenced by the tendency for the rate of stock-turn to increase with increasing size of chain.

2. In three groups (dollar-limit variety, general merchandise, and musical instrument chains) the average sales per store tends to increase with increases in the size of the chain as does also the percentage of net profit to sales. For the last two kinds of chains, the percentage of gross profit narrowed with increases in the size of the chain (as indicated by percentage of cost of merchandise sold), and the increase in percentage of net profit on sales with the size of the chain is due to the fact that the percentage of operating expenses tends to decline and the rate of turn-over to increase with increases in the number of stores operated. In dollar-limit variety chains, increases in the rate of net [fol. 902] profit on sales with the size of the chains are accompanied by increasing sales and turnover rates as well as increasing percentages of gross profit.

3. In three other kinds of chains ($5-limit variety, men's ready-to-wear, and hats and caps), the rates of net profit on sales as well as the average sales per store show a tendency to decrease with the number of stores in operation. Although the rate of turn-over in all three of these types increases with increases in the size of the chain, this tendency was not sufficient to offset (a) the declining trend of sales per store in each type, (b) the narrowing rate of gross profit of the men's ready-to-wear and hat and cap chains and (c) the increasing percentage of expenses of the $5-limit variety chains.

4. The dry goods chains constitute the only group where sales per store increase and rates of net profits on sales decrease with increases in the size of the chains. The apparent reason is that, as the size of the chain has increased, the percentage of gross profit has narrowed without any compensating tendencies for the percentage of operating expenses to decrease or turnover rates to increase. For the remaining 14 kinds of business the indecisive tendencies of the various factors made it impossible to draw any definite conclusions from their association.

By direction of the Commission.

Charles H. March, Chairman.

[fol. 903]

Section 5. Companies, stores, sales, and average operating results, by kind of chain, all years combined.

The following table shows the company—and store—years, aggregate net sales, and average operating results per store for all years combined for each of the 26 kinds of business.

Table 2.—Sales data and average major operating results, per store, by kind of chain, all years combined.

Kind of Chain.[1]	Company-Years	Store-Years[2]	Net Sales	Percent of Total Sales	Per Store Sales	Average Gross Profit	Operating Expenses	Net Profit
Grocery	445	48,360	$2,194,925,313	8.6	$45,387	$9,343	$8,387	$956
Gro. & meat	537	157,859	8,799,377,641	34.5	55,742	10,600	9,032	1,568
Meat	184	2,581	192,494,981	.8	74,567	16,711	14,887	1,824
Confectionery	112	2,552	300,940,452	1.2	117,923	57,957	50,841	7,116
Drug	582	8,485	999,609,985	3.9	117,809	43,120	38,163	4,957
Tobacco	135	9,876	656,636,378	2.6	66,485	19,434	17,649	1,785
Var. ($1 limit)	290	23,550	4,040,223,119	15.9	171,556	59,582	43,870	15,712
Var. ($5 limit)	46	471	20,575,090	.1	43,684	12,849	11,589	1,260
Var. (unlimited)	22	243	10,215,007	(3)	41,951	11,609	11,513	96
M. r'dy-to-wear	276	1,523	248,568,975	1.0	163,210	53,523	49,625	3,898
W. r'dy-to-wear	384	3,305	632,882,542	2.5	191,463	64,778	56,441	8,337
M. & W. r'dy-to-wear	260	2,951	290,397,322	1.1	98,390	45,041	36,341	8,700
M. furnishings	111	770	42,719,692	.2	55,444	20,813	20,397	416
W. accessories	47	478	25,139,505	.1	52,593	17,322	15,911	1,411
Hats & caps	75	1,705	72,267,974	.3	42,386	16,937	17,117	— 180
Millinery	103	2,454	135,410,409	.5	55,168	24,853	23,551	1,302

M. shoes	43	614	34,433,816	.1	56,036	19 215	16,617	2,598
W. shoes	104	1,334	130,493,076	.5	97,821	33,269	29,893	3,376
M. & W. shoes	489	8,292	587,572,435	2.3	70,856	22,944	20,696	2,248
Dry goods	40	274	21,755,180	.1	79,254	19,975	19,060	915
D. G. & apparel	350	8,104	1,153,910,578	4.5	142,379	37,277	28,835	8,442
Dept. store	139	2,638	4,411,083,150	17.3	1,671,815	537,944	463,584	74,360
Gen'l mdse	179	940	91,444,326	.4	97,229	19,612	16,058	3,554
Furniture	143	759	234,010,319	.9	308,111	149,841	114,520	35,321
Mus. Inst'm'ts	54	515	107,598,824	.4	208,930	70,868	67,573	3,295
Hardware	112	760	55,814,083	.2	73,391	21,105	18,729	2,376
Total and average	5,262	291,401	$25,490,500,172	100.0	87,476	23,977	20,088	3,889

[1] See appendix I, Kind of Chain Classification.
[2] All half stores have been dropped. See sec. 3.
[2] Less than one-tenth of 1 percent adjusted.

1

PLAINTIFF EXHIBIT A

Chain Store Tax.

Name of chain	City of Headquarters	Kind of business	Conducted by	1933 Number of stores taxable	1933 Under Sec. 2a	1933 Under Sec. 2b	1933 Total Tax	1933 Taxable Gross Sales	1933 Exempt Gross Sales	1933 Total Sales	1934 Number of stores taxable	1934 Under Sec. 2a	1934 Under Sec. 2b	1934 Total Tax	1934 Taxable Gross Sales	1934 Exempt Gross Sales	1934 Total Sales	1935 Number of stores	1935 Under Sec. 2a
Aaronson Apparel Shoppe	Montevideo	Retail	Individ.	1	500	865	1365	17300	20913	38213	1	500	1790	2290	36810	44001	79811	1	500
Abbott Drug Co. W.A.	Duluth	Drugs	Corp	1	500	283	783	5655	10264	15919	1	500	548	1048	10957	20087	31039	1	500
Albrecht - Son E.	St. Paul	Furs	Corp	1	500	2836	3336	56778	101148	157926	1	500	3407	3907	68137	115417	183554	1	500
Anderson C.J. & H.M.	St. Paul 1573 Univ. Ave.	Jewelry & Opt.	Corp.	1	500	138	638	2774	5439	8213	1	500	286	786	5719	12369	18088	1	500
Andersons Grocery	St Paul 1101 Front St.	Grocery	Individ.	1	500	240	740	6500	23500	27800	1	500	500	1000	—	—	—	1	500
Anderson & Co. J.W.	St. Paul Emporium	Meats	Corp.	1	500	1278	1778	24568	51674	76242	1	500	3579	4079	71586	105911	177498	1	500
Angerman & Co Inc	New York 444-8th Ave.	clothing	corp.	2	N.Y.C.	1776	1776	35521	—	—	2	1000	1963	2963	39612	48504	87766	2	1000
Askins New Clem. Inc	" 906 Broadway	clothing	Corp	2	1000	2742	3742	54836	19773	74609	2	1000	3693	4693	73869	61145	135011	2	1000
Anderson Carl V	Alexandria	Farmers	Individual	1	500	640	1140	12819	35941	48760	1	500	1370	1870	27407	73317	100724	1	500
B.G. Sandwich Shops	Chicago 174 Randolph	Restaurants	Corp.	2	1000	1464	2464	29981	33415	63396	2	1000	2465	3465	49307	49141	98448	2	1000
Bailey Ralph	Rochester Minn	Meats	Individ.	1	500	554	1054	11271	78003	89274	1	500	1332	1832	26645	96363	122808	1	500
Bakin & Steinbaums	"	Shoes	Corp	2	1000	1650	2650	33318	22385	55703	2	1000	3046	4046	68944	50007	118951	2	1000
Barbiden Bros	Omaha	Cigars & Tob.	Corp.	1	500	356	856	7180	10736	17866	1	500	427	927	8530	—	—	1	500
Berglund & Peterson	Hibbing	N.L.C.		1	500	395	895	7895	7087	14982	N.L.C.								
Berland Shoe Store	Minneapolis	Shoes	Corp.	3	1500	6881	8381	118912	67110	185922	3	1500	22715	24215	341435	170675	512110	2	1000
Berman Sporting Goods Co	St. Paul	Sporting Goods	Indiv	1	500	749	1249	14984	44787	59771	1	500	906	1406	18113	58564	76677	1	500
Bisbee C.N.	Marshall	Implements	Individ	3	1500	1244	2744	24881	17183	42064	N.L.C.								
Blooma Ice Cream Co.	St Paul	Ice Cream	Individ	2	1000	485	1485	9714	9399	19113	3	1500	3088	4588	61777	15791	77568	7	3500
Blue House Sandwich Shops	Pittsburgh Pa.	Restaurant	Corp										2500	2500	50077	10093	60170	4	2000
Blue Ribbon Markets	Duluth	Meats	Corp	2	1000	3541	4541	70837	54626	125458	2	1000	6089	7089	110891	88560	199451	2	1000
Bonnacca Bros	Rochester, Minn	Cigars	Individ.	1	500	425	925	8500	7576	16076	1	500	N.L.C.	500					
Brett Co. G.E.	Mankato	Dry Goods	Corp.	1	500	1913	2413	38258	75518	113776	N.L.C.								
Bridgeman-Russell Co	Duluth	Dairy Prod.	corp	1	500	369	869	7757	54617	62374	1	500	858	1358	17159	89457	106616	1	500
Browning King & Co.	St Paul	clothing	corp	1	500	7124	7624	70017	80771	150788	1	500	2232	2732	44637	50958	95595	1	600
Brown Hall Co	St Paul	Millinery	Prop.	10	6000	2412	8412	48750	15734	63484	10	6000	7405	13405	124047	27964	152009	10	7500
Buddies Bros Inc	Chicago 1400 N 46	Retail	corp	5	2500	13046	15546	180462	50904	231366	5	2500	35665	38165	378942	111991	450936	5	2500
Buengua Furniture Co	Neil Allen	Furniture	corp	1	500	1750	2250	35000	—	—	1	500	950	1450	19000	51557	71557	1	500
Burg Co.	St Paul	Hats		19	19500	13018	32518	180185	18873	199058	20	23000	41869	64869	359343	32917	392260	20	23000
Burlough Adding Mach Co	Detroit Mich	Office Supplies	corp	1	500	313	813	6252	89024	95276	1	500	464	964	9482	178608	187930	1	500
Buttery Store, Inc.	Minneapolis	R & H	corp	1	500	713	1213	14274	21805	36109	1	500	1539	2039	31886	51854	83810	1	500
Bye Clothing Co. John M.	Brainerd	clothing	corp	1	500	355	855	7109	26546	33655	1	500	834	1334	16678	49408	66886	1	500
Bankman O.	Virginia	R & H & Gen	Indiv.	1	500	1211	1711	24226	54471	80697	1	500	1055	1555	21102	73203	94305	1	500
Bjoarkman, Roy H. Inc	Minneapolis	R & H & Gen	Corp	1	500	924	1424	18465	108031	126496	1	500	1304	1804	26175	240078	266253	1	500
7.95 Bedrens Allen Inc	"	Millinery	Corp	9	4500	2137	6637	43746	12491	55737	9	4500	6428	10928	114286	29000	143286	9	4500
8.24 Colby & Mosby Cut Rate Cigar Stores	"	Tobacco	Prop.	1	500	3573	4073	70485	83751	153203	1	500	7612	8112	126122	152573	278695	1	500
Canfield & Barden	Fairmont	Gen Mdse	Prop	1	500	555	1055	11102	13917	25019	1	500	1188	1688	23761	29897	53658	1	500
Cannon Shoe Co	Baltimore Md	Shoes	corp	1	500		500				Sold Harmon Shoe			1928	1928	31895	33568	1	500
Carbide & Carbon Chem Co	New York	Chem. Gases	corp	1	500	1027	1527	20548	—	—	1	500	2541	3041	50873	—	—	1	500
Cardoza Bros	St Paul	Furniture	Corp	1	500	3287	3787	65742	436983	502725	1	500	8355	8855	133548	79465	213013	1	500
Carlson Mers Co Inc	Hall	Gen Mdse	corp	3	1500	2734	4234	50675	23018	73693	3	1500	8965	10465	137810	43720	181530	4	2000
Caron-Haran Drug Co	Minneapolis	Drugs	Individ	2	1000	1064	2064	21985	15721	37005	2	1000	1500	2500	30075	32383	62458	1	500
Chapman Graham, Inc	"	Ice Cream	corp	1	500	625	1125	16851	25756	39768	1	500	1320	1820	26400	57250	83650	1	500
City Markets Co Inc	Duluth	Gro Meats	corp	5	2500	22319	24819	248790	94679	343471	7	3500	89455	92955	548186	233061	781247	6	3000
Community Markets	"	Gro Meat	Indiv	1	500	1700	2200	24072	27131	51203	1	500	3579	4079	71570	85764	157334	1	500
Conrad Fur Co	Winona	Furs	corp	4	2000	2690	4690	53790	33929	87719	4	2000	3884	5884	77671	75603	153274	3	1500
Crawford Millinery Co.	Chicago 18 So Michigan	Millinery	Corp	1	500	3948	4448	78161	63957	142118	2	1000	11872	12872	168719	146631	315350	2	1000

N.Y.C. - not yet doing. N.L.C. - no longer a chain.

	Name of Claim	City of Headquarters	Kind of business	Conducted by	1933 Number of Taxable Stores	1933 Under Sec. 2a	1933 Under Sec. 26	1933 Total Tax	1933 Taxable Gross sales	1933 Exempt Gross sales	1933 Total Sales	1934 Number of Taxable Stores	1934 Under Sec. 2a	1934 Under Sec. 26	1934 Total Tax	1934 Taxable Gross sales	1934 Exempt Gross sales	1934 Total Sales	1935 Number of Taxable Stores	1935 Under Sec. 2a
704	Cook F. H.	Rochester Minn	Groc. Bakery	Indiv	1	500	440	940	8803	9060	17863	2	1000	1128	2128	22568	15273	37841	2	1000
569	Council Oaks Stores	Sioux City Ia.	Groc	corp	1	500	2249	2749	44387	19194	63576	1	500	1250	1750	24992	58652	83644	1	500
680	Crystal Hatteries	Lake Crystal	Hats	corp				NYC				4	2000	1050	3050	20096	—	—	4	2000
NLC	Cutting J. D.	Byron	Misc	Indiv	3	1500		15	NLC.											
665	Davis & Rubber Co	Minneapolis	Furniture	corp	1	500	9021	9521	140311	169244	309555	1	500	3218	3268	310818	390501	701419	1	500
NLC	Davis Stores	Aitkin	Groc. Conf	Indiv	2	1000	596	1596	11927	—	—	2	1000	NLC	1000					
611	Dayton Co	Minneapolis	Dept store	Corp	2	1000	4993	5993	99870	658863	6754733	1	500	8441	8941	134407	—	—	1	500
577	Dictaphone Sales Corp	Wilmington Del	Dictaphones	corp	1	500	329	829	6574	27533	34107	1	500	525	1025	10499	42703	52702	1	500
NLC	Dutch Bakery	St Paul	Bakery	Indiv	2	1000	162	1162	3259	—	—	NLC.								
760	Eagle Provision Co	Hopkins	Grocers	corp	2	1000	743	1743	14970	17376	32346	2	1000	1100	2100	87198	36693	58891	1	500
580	Eastern Minn Power Co	Amery Wisc	Elec appl	corp	4	2000	168	2168	3353	3200	6553	4	2000	446	2446	8913	3696	12609	4	2000
630	Eastman Kodak Co	Rochester N.Y.	photo supp	corp	2	1000	3342	4342	44441	139174	205615	2	1000	2848	3848	56549	78521	135070	2	1000
608	Eau Claire Trust	St Paul	Cafeteria	Com Tru Trust	1	500	1155	1655	23089	27984	51073	1	500	1664	2164	33772	56016	88788		NLC
596	Eckrich Caterers	Minneapolis	Bakeries	corp	25	40600	17380	57880	215868	22574	238442	25	40500	583-6	98806	433772	38524	471749	25	40500
529	Eisalem Bros	Buffalo Lake	Gen Mdse	Indiv	2	1000	2197	3197	43901	32991	76892	2	1000	4695	5695	93904	64748	158652	2	1000
655	Electrolux Co	New York 500 5th Av.	appliances	corp	1	500	1917	2417	38342	27177	65514		500	5845	6345	108453	119046	227479	1	500
794	East End Grocery	Duluth	Groc. Mkt	Indiv			1848	1848	36960	58369	95329	1	500	3970	4470	79412	118624	198036	1	500
516	Engel A. & J. Inc	New York 20 W. 33rd St	Furs	Corp	1	500	748	1248	14966	25101	40067	1	500	214	714	4289	6104	10393		NLC
790	Elizabeth Shops	Minneapolis	Hosiery	Indiv				N.Y.C						N.Y.C						500
574	Fair Stores	Pine City	Gen & Dry G.	Indiv	3	1500	3242	4742	64834	79160	143994	3	1500	3648	5148	70968	85475	156443	3	1500
648	Family Shoe Store	Minneapolis	Shoes	corp	3	1500	1231	2731	24613	36749	61362	3	1500	3834	5334	76687	71371	148008	3	1500
734	Fanny Farmer Candy Shops	Rochester N.Y.	Candy	corp	14	12000	8085	20085	130848	22879	153677	14	12000	27960	39960	286401	55167	341568	14	12000
536	Farm Service Store	Minneapolis	Farm Prod	corp	28	51000	781	63781	177815	7687	185502	29	54500	61871	116371	447493	433114	490807	30	61000
491	Farmers Store Co	Glenville Wis	Gen Mdse	corp	1	500	4	3942	39454	113676	153080	1	500	3919	4419	78381	235441	313822	1	500
717	Federal Auto Stores of N.H. Inc	Davenport Iowa	Bakery	corp	6	3000	4	7048	94967	11034	96001	6	3000	10482	13482	131734	45506	177238	5	2500
NLC	Federal Public Service Co	Minneapolis	appliances	corp	6	3000	258	3258	5099	2719	7818	6	3000		3000	Changed to				
657	Fellman & Carne Shoe Store Co	Chicago 209 S. State St	shoes	corp	2	1000	2345	3345	46987	22893	69810	2	1000	5911	6911	104112	41739	150851	2	1000
607	Fineberg & Co. J.	St. Paul	Gen Mdse	corp	2	1000	1444	2444	28883	31190	60073	2	1000	2814	3814	56285	62066	119351	2	1000
NLC	Field Distilled Co	St Paul	Operate	corp	1	100	03	203	56	500842	500898			NLC.						
751	Firestone Tire & Rubber Co	Akron O.	Tires	Corp	3	1500	1805	3305	36102	30359	66461	2	1000	4370	5370	87411	44184	131595	4	2000
698	Fisher Clothing Co	Manitoba	clothing	corp	1	500	841	1341	16853	31321	48144	1	500	1816	2316	36315	64331	100646	1	500
714	Florsheim Shoe Store	Chicago	Shoe	corp	2	1000	1386	2386	27733	26312	54045	2	1000	3038	4038	60760	53740	114500	2	1000
777	Flory A. F.	Staples	Groceries	Indiv	1	500	396	896	7973	10784	18707	1	500	538	1038	10754	27418	38172	1	500
700	Fojanian & Clark	Minneapolis	Clothing	Indiv	1	500	2207	2707	46139	67798	113937	1	500	6207	6707	117074	156158	273232	1	500
800	Forester Furniture Co	Springfield	Furniture	Pop	1	500	707	1207	14144	13757	27901	1	500	1626	2126	32728	32509	65237	1	500
590	Freeman Inc		Sporting Goods	corp	1	500	1044	1544	20882	21487	42369	1	500	1796	2296	35971	—	—	1	500
617	Friend Shrimp & Hunt	Boston Ma Malden	Shoes	corp	1	500	439	939	8789	12964	21758	1	500	913	1413	18274	25274	43553	1	500
599	Fuller Brush Co	Hartford Conn.	Brushes	Corp	1	500	56	556	1119	1719	2838	1	500	65	565	1304	3010	4314		NLC
697	Gamble Skogmo Inc	Minneapolis	Auto Supplies	corp	41	140500	148236	288736	1707471	21335	1728806	40	130000	686373	816373	1356373	55806	1412179	44	161500
838	Ganz & M. M.		Grocery	corp	1	500	934	1434	18682	127898	146580	1	500	1932	2432	38636	273848	312484	1	500
652	Gately Clothing Co		Clothing	corp	1	500	1048	1548	20967	63352	84319	1	500	2609	3109	52178	105333	157511	1	500
651	Gately Supply Co	Duluth	Clothing	corp	1	500	569	1069	11366	80110	91476	1	500	1098	1598	21955	184339	206294	1	500
512	Geko Co of Minn	Brockton Mass	Shoes	Corp	1	500	1086	1586	21719	33797	55516	1	500	2374	2874	47885	79713	127668	1	500
565	Gregolycko Company	Duluth	Groceries	corp	7	3500	21337	24837	247443	211099	458342	7	3500	95353	98858	567860	367940	935800	7	3500
581	Geldner Bros Co	Mason City	clothing	corp	1	500	1148	1648	27459	31817	59276	1	500	2496	2996	49927	67167	117094	1	500
750	Gottelson Jewelry Co	Minneapolis	Jewelry	corp	1	500	973	1473	19469	—	—	1	500	1540	2040	30809	73371	104330	1	500

	Name of Claim	City of Headquarters	Kind of business	Conducted by		1933 Number of Taxable Stores	1933 Under Sec. 2a	1933 Under Sec. 2b	1933 Total Tax	1933 Taxable Gross Sales	1933 Exempt Gross Sales	1933 Total Sales		1934 Number of Taxable Stores	1934 Under Sec. 2a	1934 Under Sec. 2b	1934 Total Tax	1934 Taxable Gross Sales	1934 Exempt Gross Sales	1934 Total Sales		1935 Number of Stores	1935 Under Sec. 2a
597	Goodrich Co. B.F.	Akron	Tires	Corp		3	1500	44485	59985	897111	78940	1686651		2	1000	48107	58107	710022	71492	1145514	✓	3	1500
710	Goodyear Service, Inc	Minneapolis	Tires	Corp		5	2500	46551	71551	930331	86246	1792577		3	1500	12336	13836	173357	19880	377157	✓	3	1500
507	Grandlumber Tire Co	Chicago 308 Wash.	Grocery	Corp		2	1000	7365	8365	139654	91201	2310855		2	1000	21438	22438	242920	20344	446364	✓	2	1000
513	Great Co N.Y.	New York 1401 Bdy	Gen Mdse Dept Store	Corp		2	1000	34436	35436	3371176	320074	6511418		2	1000	125712	126712	1651779	69328	1387107	✓	2	1000
787	Gray Hopper	Worthington	Apparel	Indiv		1	500	357	857	71185	18511	326656		1	500	453	953	9059	12914	21873	✓	1	500
800	Gray Style Shop	Minneapolis	"	Indiv		1	500	620	1120	133992	12574	259711		1	500	1172	1672	23446	23857	47303	✓	1	500
576	Great Atl. & Pac. Tea Co.	New York	Groceries	Corp		57	34850	154770	189620	2217731	99637	2317368		59	37950	253738	391689					59	37950
514	Green Chain Store N.J.		Groceries	Corp		1	500	2889	3389	57786	199458	2571238		1	500	4470	5470	98192	379001	477193	✓	1	500
609	Greene Grocery	Park Rapids	Gro-Meat	Corp		1	500	649	1149	—	—			1	500	1376	1876	26320	21349	47669	✓	1	500
817	Gill Co Frank	Wisconsin Rapids	Paints	Indiv														N.Y.C.				1	500
737	Hahn Cash Store	Cass Plaine	Gen Mdse	Coop		3	1500	2374	3874	47484	30534	781018		4	2000	6756	8756	117561	65029	1876590	✓	4	2000
634	Hahn Dept Stores, Inc	New York	dept Store	Corp		1	500	169035	169535	2361024	246803	4968827		1	500	40902 38	40907 38	476238	49412 36	9714974	✓	1	500
827	Hammond Lumber Inc	Minneapolis	Retail Millwork	Corp		2	1000	597	1597	11949	9130	210794		3	1500	1795	3295	35899	22686	58585	✓	3	1500
	Harrison J.A.	Mpls.	Farms	Indiv		3	1500	2310	3810	46705	39867	860672						N.C.					
671	Hart-Sons Jas Inc	Long Prairie	Gen Mdse	Corp		1	500	592	1092	118340	106431	1184771		1	500	1552	2052	31024	24376	29480	✓	1	500
585	Hardy Stores LB Inc	Little Falls	Groceries	Corp		9	4500	9146	13646	1414637	593804	2008137		9	4500	36163	40663	330814	122714	4535281	✓	11	7500
570	Hansen Lbr. Co	Gilbert	Millwork	Corp		2	1000	878	1878	175611	18336	1939947		2	1000	4744	14744	84824	69839	783711	✓	1	500
701	Hilland Hdw Co	Sauk Center	Hdwe	Indiv		1	500	4027	9027	80501	17135	2518501		1	500	939	14434	78087	36008	5479501	✓	1	500
657	Hirma Bros	Fairmont	Gro-Meat	Prop		1	500	319	819	63902	12368	1875870		1	500	680	1180	13600	22631	36231	✓	1	500
	Hoganson A.L.	Minneapolis	Groceries	Indiv		1	500	4496	9996	99928	84446	1837474						N.C.					
741	Holland Furnace Co	Holland, Mich.	Heaters	Corp		10	6000	33377	93937	670440	173777	8441817		13	10500	57002	162202	107025	37969	1449914	✓	9	4500
467	Holm Bros	Alexandria	Hdwe	Prop		5	2500	31221	56221	624177	230220	8543797		5	2500	40315	68158	86308	31806	1181114	✓	5	2500
716	Holt Motor Co	Minneapolis	Auto	Corp		3	1500	19525	21025	2301641	1556871	3858512		4	2000	53778	55778	415110	348219	7633097	✓	4	3000
617	Hom. Ind. Chic Store	Minneapolis	Store	Corp		1	500	3195	3695	63890	1158766	1797656		1	500	10253	10753	152505	22443	373968	✓	1	500
839	Hoolig Meat Co	Stillwater	Groc. & Meat	Corp		2	1000	1991	2991	39824	—	—		2	1000	4000	5000	est.				2	1000
175	Hoover Co	North Canton Ohio	cleaners	Corp		2	1000	158	1158	3166	6891	100647		2	1002	378	1378	7577	14637	223214	✓	2	1000
147	Hopkins & Nelson	Emery Minn.	Hdwe & Implements	Prop		1	500	478	978	9567	7535	171027		1	500	846	1346	16927	17885	348174	✓	1	500
	Hunt Bros	Red Lake Falls				1	500	179	679	3587	18708	218158		1	500		500	N.L.C.					
778	Hutchins Store Geo	Wilmington Del	Shoes	Corp		1	500	523	1023	104673	12794	332611		1	500	1414	1914	28271	36308	645794	✓	1	500
823	Hanson Bros Hdwe	Minneapolis 2300 Pk Ave	Hdwe	Prop		1	500	526	1026	105073	423384	5284411		1	500	1115	1615	22392	41081	653733	✓	1	500
	Independent Gro. Mart Co	Ada	Groceries	Indiv						NYC				1	500	51	551	1026	4061	5087	✓		# N.L.C.
649	Interstate Co	Chicago Ill.	Motor Cycles	Corp		15	2500	3033	5533	606624	163455	770079		5	2500	4367	6867	87343	39806	1271149	✓	5	2500
670	Interstate Power Co	Dubuque	Appliances	Corp		12	9000	25784	34784	516811	74258	591069		12	9000	35563	44563	125563	71254	285333	✓	12	9000
707	International Harvester Co	Chicago	Implements	Corp		13	10500	14263	24763	1926279	1104700	3030979		14	12000	34739	46739	823694	224806	5485000	✓	13	10500
645	Jeppesen L.P.	Litchfield	Gen. Mdse	Indiv		1	500	155	655	30764	1757515	1566101		2	1000	1001	2001	20035	9282	79317	✓	2	1000
562	Jewel Tea Co.	Barrington Ill.	Groceries	Corp		2	1000	22841	32841	1448258	1176977	1625235		2	1000	5639	6639	106386	284916	3913022	✓	2	1000
748	Johnson H.W.	St. Paul 301 Robert St	Carpets	Indiv		1	500	500	1000	100133	30353	403486		1	500	1093	1593	21857	35307	571644	✓	1	500
650	Johnson & Co	Hanley Falls	Gen Mdse	Prop		1	500	776	1276	155033	278697	4340730		1	500	1224	1724	244179	58878	833578	✓	1	500
755	Johnson Mer. Co M.M.	Sherburn	Gen Mdse	Coop		2	1000	2739	3739	547833	357044	9048877		2	1000	7357	8257	1225177	81044	2035611	✓	2	1000
628	Joy Bros. Motor Car Co	St. Paul	Auto	Prop		1	500	275	775	56032	—	—		1	500	960	1460	19203	—	—		1	500
555	Junte Bros.	Harney	Gen Mdse	Prop		1	500	696	1196	139197	227244	3664437		1	500	1388	1888	27755	47790	750455	✓	1	500
591	Kelley Fuel Co	Duluth 17th Superior	Furniture	Corp		2	1000	1671	2671	334104	521159	8513263		2	1000	4216	5216	84378	155751	2400794	✓	2	1000
758	Kelly Springfield Tire Co	New York	Tires - Acc.	Corp		Sun Stores	Pay Corp	289	289	57885	214032	2718818		1	500	101	601	20224	34024	360448	✓		N.L.C.
579	Kezele & Co. J.	Virginia	Furniture	Corp		1	500	1202	1702	240334	868946	1109280		1	500	2349	2849	164979	190037	2370165	✓	1	500
677	Kimball Motor Co	Minneapolis	Auto	Corp		1	500	975	1475	195024	521466	7164888		1	500	1557	2058	31160	158854	1901414	✓		N.L.C.
602	Kindy Optical Co.	St. Paul	Opt. Goods	Corp		5	2500	3071	5571	614178	231700	8459878		5	2500	9007	11507	140071	50881	1904578		5	2500

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Name of Chain	City of Headquarters		Kind of business	Conducted by	1933 Number of Taxable Stores	1933 Under Sec. 2a	1933 Under Sec. 2b	1933 Total Tax	1933 Taxable Gross Sales	1933 Exempt Gross Sales	1933 Total Sales	1934 Number of Taxable Stores	1934 Under Sec. 2a	1934 Under Sec. 2b	1934 Total Tax	1934 Taxable Gross Sales	1934 Exempt Gross Sales	1934 Total Sales	1935 Number of Taxable Stores	1935 Under Sec. 2a
Kinney Co G R Inc	New York	225 W 34	Shoes	Corp	8	4000	8194	12192	131945	52016	183961	8	4000	30989	34989	304945	125969	430914	8	4000
Knowles Inc	Minneapolis		Drugs	Corp	3	1500	2564	4064	51772	43868	95640	3	1500	5284	6784	102839	70826	173665	3	1500
Kellia & Co	Mound		Foods	Pap	1	500	634	1134	17677	21628	39305	1	500	1183	1683	23666	52302	76058		NLC
Kraft & Son A	Minneapolis		meats	Indiv	1	500	556	1056	11171	16007	27178	1	500	1311	1811	36411	34519	58930	1	500
Krank Alfred J	St Paul		Barber supplies	Coop	2	1000	203	1203	4031	5639	9670	1	500	581	1081	11308 *	11045	22353		NLC
Kriegel Bros	St Paul		Drugs	Indiv	4	2000	3481	5481	69677	17949	87619	4	2000	9809	11809	148085	37967	185052	4	2000
Kresge Co S S	Detroit	Mich	Variety Stores	corp	13	10500	335486	345986	1005486	411354	1416840	12	10500	1940954	1351454	2010954	821455	2832409	13	10500
Kumbrough Cash Markets	St Paul		Foods	Coop		N.Y.C.						2		2087	2087	41747	20928	64675	2	1000
Kulp Drug Co	Minneapolis		Drugs	Pap	1	500	66	566	1310	2465	3775	1	500	873	1373	17063	43687	60750	1	500
Landis Food Store Of	Minneapolis		Foods	Indiv	2	1500	2037	3537	40750	26441	66891	4	2000	4215	6215	84290	19359	103649	3	1500
Langford Lumber Yards Inc			Lumber	coop	10	5000	5337	10337	103370	—	—	10	5000	18252	33252	221681	—	—	8	4000
Larsen Hdwe Co	Moorhead		Hdwe	coop	1	500	556	1056	11703	11837	23040	1	500	979	1479	19575	28841	48416	1	500
Larson Bros	Litchfield		meats	Pap	1	500	318	818	6365	10078	16443	1	500	600	1100	12035	22363	34398	1	500
Lasalle & Koch	Grand Rapids		Clothing	Pap	2	1000	4679	5679	93608	76757	170365	2	1000	6600	7600	116552	102000	218552	2	1000
Lewis Co The	Faribault		R T & W	Indiv	1	500	436	936	8117	17031	25148	1	500	991	1491	19824	23953	43777	1	500
Liggett Drug Co	New York	2 Park Ave	Drugs	corp	7	3500	83088	86588	526962	113627	640589	7	3500	74568	78068	698273	121504	819807	6	3000
Linde Air Products		30 E 42 St	Gases	corp	1	500	1074	1574	21397	24128	45526	3	1500	6873	8373	212488	94496	306984	4	2000
Limpert Clothing Co		141-5 Ave	Clothing	corp	1	500	257	757	5148	22218	27366	2	1000	1750	2750	25062	57438	82494	2	1000
Lowe & Campbell Athl Co	Kansas City		Sporting Goods	corp	1	500	847	1347	16937	4073	21010	1	500	517	1017	10348	55337	65685	1	500
Larson & Bakken	Minneapolis		Meats	Pap		N.Y.C.						1	500	692	1192	13863	28418	42281	1	500
Lycan Co	Bemidji		Hdwe Cafe	Coop	1	500	350	850	6995	12101	19096	1	500	777	1277	15534	24387	39921	1	500
McKelvey Co	Wilmington	Del	N.L.C.		1	500		500						N.A.C.						
McLellan Stores	New York	370 7th	Variety chain	Foreign	3	1500	2211	3711	44219	62488	96707	1	500	1926	2426	38521	107203	145744	1	500
McAllister Lines	Breckenridge		Hotels	Indiv					N.Y.C.			1	500	254	754	5081	24403	29484	1	500
Macdonald Cycle C	Mankato		Sporting Goods	Pap	3	1500	2350	3850	47196	47883	95679	3	1500	3865	5365	77284	72901	150185	3	1500
Malmies Grocery	Alkins dis		Groceries	Indiv	1	500	324	824	6470	43928	49398	1	500	652	1152	13048	49738	62786	1	500
Mangels of Minn	New York	1115 Broadway	R T & W	Coop	1	500	3514	4014	70290	82457	152747	2	1000	9567	10567	145668	110774	256442	2	1000
Margold Dress	Rochester	Minn	Dairy Prin	coop	4	2000	1411	2111	7844	3375	6219	4	2000	171	2171	3424	4185	7609	4	2000
Marna Lee Frocks	Minneapolis		R T & W	Pap	3	1500	1594	3094	31890	35800	67690	3	1500	2855	4355	56796	47396	104192	3	1500
Macintire Bros	Everett		Men's Clothing	Pap	1	500	943	1443	18678	19678	37148	1	500	1678	2178	36568	27046	63614	1	500
Meir Wolf - Sons Co	St Louis		Furniture	coop	1	500	1090	1590	21801	50974	72775	1	500	1956	2456	39116	97170	136286	1	500
Melville Shoe Corp	New York	555-5 Ave	Shoes	corp	5	2500	4538	7038	90755	28762	119017	5	2500	18212	20712	221482	68607	290089	5	2500
Midland Bros	St Paul		Groceries	coop	1	500	1605	2105	32107	289756	321863	1	500	3397	3897	67903	567642	635545	1	500
Minar Co	Minneapolis		Auto	Pap	3	1500	4843	6343	96864	100083	196947	3	1500	30325	31825	301693	436419	738042	4	2000
Minneapolis Shoe Co	Minneapolis		Shoes	coop	8	4000	3843	7843	76848	37887	114735	9	4500	11152	15652	161823	61705	223528	8	4000
Minn Northern Nat Gas Co	Omaha		Gas appl	Corp								11	7500	663	8163	13753	23710	36963	11	7500
Power & Light Co	Duluth		appliances	coop	12	9000	665	9665	13394	29789	43081	12	9000	3972	12972	78436	78779	157215	12	9000
Mode The	St Louis	Mo	Millinery	coop	7	3500	1361	4861	27277	13390	40617	7	3500	3774	7274	75473	31897	107370	7	3500
Model Market	Minneapolis		Meats	Indiv	1	500	1300	1800	25996	114450	70446	1	500	2608	3108	52164	96667	148831	1	500
Monaco & Son Ed	Park Rapids		Diplomats	Pap	1	500	394	894	7892	9411	17303	1	500	390	890	—	—			N.L.C.
Montgomery Ward & Co	Chicago		Misc	Corp	15	135	836008	849508	1506007	2733007	4239014	15	13500	2913812	2927312	3585811	3193393	6777204	15	13500
Motor Power Equip Co	St Paul		Appliances	coop	3	15	3796	4796	65916	231787	297703	3	15	4901	5051	64911	348176	813087	3	150
Murphy - Co	Stillwater		Dept Store	Coop	1	5	1411	1911	28377	42704	71081	1	5	2940	3440	58813	85000	143813	1	500
Murphy D D Inc	Blue Earth		Auto	Indiv	2	10	1240	2240	28807	68409	97216	2	10	3995	4995	79904	182798	262702	2	1000
Minnesota Athletic Co	Minneapolis		Appliances	coop		N.Y.C.								854	854	17077	7546	24623	1	500

* Tax Federal Public Income Corp.

	Name of Claim	City of Headquarters		Kind of business	Contested by	1933 Number of Taxable Stores	1933 Under Sec 2a	1933 Under Sec 2b	1933 Total Tax	1933 Taxable Gross Sales	1933 Exempt Gross Sales	1933 Total Sales	1934 Number of Taxable Stores	1934 Under Sec 2a	1934 Under Sec 2b	1934 Total Tax	1934 Taxable Gross Sales	1934 Exempt Gross Sales	1934 Total Sales	1935 Number of Taxable Stores	1935 Under Sec 2a
799	Moradeed E.R.	Minneapolis		Cigars etc	Indiv	1	$00	715	1215	14203	1666	30963	1	$00	683	1183	13667	15000	28667	2	1000
856	Mitby & Sattler Co	"		Furniture	Corp	1	500	1609	2109	32189	47857	79546	2	1000	3262	4262	65246	78370	143616	2	1000
678	Nagel Hdwe Co	"		Hdwe	corp	2	1000	1997	1997	39939	79748	119687	2	1000	4470	5470	49391	170837	260228	3	1500
588	National Cash Register Co	Dayton	O	registers	corp	3	1600	3779	5279	75575	69075	144600	3	1500	7341	8841	123438	166924	288362	2	1000
764	National S-10-100	St Paul		Variety	corp	2	1000	2434	3434	48680	30929	79609	2	1000	2623	3623	52468	32517	84985		
713	National Tea Co	Minneapolis		Foods	Corp	163	1976000	2187967	4163967	2857967	47793	3005760	154	1852000	4570051	6394051	6194250	96595	6888845	137	1418000
532	Neisner Brothers	Rochester	N.Y.	5¢ & $1.00	Corp	1	500	7374	7874	123742	113526	237268	1	500	16429	16929	209524	190692	400116	1	500
679	Nelson Fire Service Co	Rochester	Minn	Fires	corp	1	500	516	1016	10378	13719	24047	1	500	1727	2227	34554	52953	87507	1	500
	Newark Shoe Co	Baltimore	Md	Shoes	Corp	-	-	748	748	14960	15179	30099	1	500	NLC	500					
681	Newberry Co. J.J.	New York	205-5th	5¢-10¢-25¢	corp	1	500	1538	2038	30756	89587	120343	1	500	3850	4350	77009	146243	223252	1	500
525	New England Fire Co	Minneapolis		Furniture	Corp	2	1000	3617	4617	72337	495624	567401	2	1000	9683	10683	146879	794235	941064	2	1000
540	Newmans - Ambros	New York	16 W 46	Coats Suits	corp	1	500	9417	9917	1141115	66615	207730	1	500	8927	9427	139271	326662	465933	1	500
716	Nisby Dept Store	Barnesville		Dept Store	corp	1	500	1562	2062	31249	49008	80257	1	500	3069	3569	61387	116067	177454	1	500
554	Nobis Co G.H.	St Paul		Gen Mdse	corp	1	500	2827	3327	66524	67515	134039	1	500	2489	2989	49789	59926	109715	1	500
791	North American Creamery Co	Paynesville		Dairy Product	Corp	2	1000	418	1418	8269	9491	17560	1	500	327	827	7430	9259	17689	1	500
640	Nust Co	Minneapolis		Gro Mast	corp	5	2500	4749	7249	94977	63300	158277	2	1000	2608	3608	224051	158341	382392	2	1000
621	Nordlum State Power	"		Appliances	corp	23	33800	124110	157910	1741147	1772670	2914764	23	33500	69618	103118	478471	320138	798609	22	30000
585	Northwestern Ins Co	Coatsbookers	Ia	Fire	corp	1	500	3792	4292	7447	30916	38433	1	500	571	1071	11413	43349	54762	1	500
521	Numm-Buck Shoe Co	Milwaukee		Shoes	Corp	1	500	493	972	9855	11988	21843	1	500	1150	1650	29995	15361	45356	1	1000
759	Olson Bros	Duluth	2402 W 1st	Grocery	corp	1	500	688	1188	13760	49825	63585	1	500	1270	1770	25483	54092	79575	1	500
765	Otto Bros	St Cloud		Auto	Prop	1	500	500	1000	10037	25279	25315	1	500	1870	2370	37396	106200	143596	1	500
	Oxweld Acetylene	New York	30 E 42	gases	corp	3	1500	1439	2939	78789	8039	36828	3	1500		1500					N.L.C
704	Oesterreich F.W.	Rochester	Minn	Cigars	Indiv	2	1000	564	1564	11784	19827	31611	2	1000	714	1714	14275	19057	33332	2	1000
606	Penor Shoe Store Co	Des Moines		Shoes	corp	2	1000	1570	2570	30419	20506	50925	1	500	1964	2464	39287	43593	82880	1	500
893	Peters Store Inc	Omaha		Foods	corp	1	500	1216	1716	24306	28294	52600	1	500	2719	3219	54375	63261	117636	1	500
721	Park Region Baking Co	Brainerd		Bakery	corp	1	500	765	1265	5294	1683	6977	1	500	2380	2880	47614	2086	49700	1	500
553	Pearce - Corbett	St Paul		Fruit	Prop	1	500	1818	2318	36368	35409	71777	1	500	4003	4503	80058	82119	162177	1	500
623	Penney & JC	New York	330 W 34	Gen Mdse	corp	61	410100	2722225	3132325	3349006	176434	3519159	61	410500	6014062	6424562	6884061	356182	7040243	58	3642500
766	Peter - Son Geo	Crookston		Gen Mdse	Prop	1	500	641	1141	17832	55582	73405	1	500	2108	2608	44160	51696	93856	1	2000
726	Peterson - Bidstrup	Wadena		Produce	Corp	18	18000	1814	19814	317371	54278	371649	18	18000	47220	77220	94206	16673	111028	2	23000
784	Peterson - Sons Drug Co	J.O. Minneapolis		Drugs	corp	3	1510	2144	3654	42886	16529	59415	3	1500	5449	6949	104498	96338	140836	3	1500
768	Pierce Bros Inc	Chicago		Millinery	corp	6	3000	2547	5547	38938	11048	49986	6	3000	7671	10671	176709	33030	159739	7	3500
600	Piggly Wiggly N.W. Inc	Duluth		Gro Mdse	Corp	10	6000	34808	40808	324000	48574	372618	10	6000	117348	118348	618370	121343	739713	9	4500
647	Pilsbury Flour Mills Co	New York	Mills Min	Flour	corp	2	1000	694	1694	13888	10771	24659	2	1000	845	1845	16499	11844	28343	2	1000
646	Pioneer Coffee Co	Moorhead		Coffee	corp	1	500	491	991	9835	29010	38845	1	500	600	1100	11990	47002	58992	1	500
582	Prescott Food Canning Co	St Paul	352 Rand	Groceries	Indiv	1	500	301	801	6073	9081	15104	1	500	644	1144	12887	14981	27868	1	500
536	Red Adair Products Inc	New York	330 E 42	Gases	Corp	1	500	1296	1796	25495	39302	65227	1	500	3402	3902	68034	81471	149505	1	500
639	Quebec Service Store	Rochester	Minn	Groceries	Indiv	2	1000	1319	2319	26395	17194	43589	2	1000	1735	2735	24614	24773	49387	1	500
681	Quality Food Store Inc	Fargo		Foods	corp	5	2500	4143	6643	358216	69444	427660	14	12000	473570	485570	1305551	203851	1934402	14	12000
739	Reddoty D.G.A. Store	Clements		Gro Mast	Indiv	1	500	611	1111	17755	13462	31217	2	1000	1785	2785	35608	26282	61950	2	1000
741	Remaley & Co F.H.	St Paul		Gro	corp	2	1000	211	1211	4214	40302	44516	1	500	349	849	7383	105780	113163	1	500
-	Raymond Hdwe Co	"		Hdwe	corp	1	500		500				1	500	NLC	500					NLC
595	Red Owl Stores	Minneapolis		Gro Mast	corp	74	617000	1301848	1918848	19718448	95774	19671074	74	617000	3208533	3825533	44548282	166950	44715232	72	5810000
642	Remington Rand Inc	Buffalo		Office Supply	corp	2	1000	1779	2779	34678	31681	66359	2	1000	4358	5358	87154	69052	156206	2	1000
592	Richman Bros Co	Cleveland		Clothing	corp	1	500	4206	4706	84113	79364	163477	1	500	13601	14101	186014	178568	364582	1	500

	Name of Chain	City of Headquarters	Kind of business	Conducted by	1933 Number of Taxable Stores	1933 Under Sec 2a	1933 Under Sec 2b	1933 Total Tax	1933 Taxable Gross Sales	1933 Exempt Gross Sales	1933 Total Sales	1934 Number of Taxable Stores	1934 Under Sec 2a	1934 Under Sec 2b	1934 Total Tax	1934 Taxable Gross Sales	1934 Exempt Gross Sales	1934 Total Sales	1935 Number of Taxable Stores	1935 Under Sec 2a
769	Rickard-Brooke Co	Duluth	Groc & Mkt	corp	1	500	340	840	6794	68144	74938	1	500	183	683	3683	131787	135470		N.L.C.
824	Rising Helen Store Co	Ulrichsburg	Misc	Indiv	1	500	361	861	7203	7808	15031	1	500	658	1158	13158	17110	30268	2	1000
761	Rogers Co. H.B.	Minneapolis	Supplies	corp	1	500	1450	1950	28984	65404	94426	1	500	3570	4070	71405	139291	210696	1	500
782	Ross Rose Pedigree Co	"	Appliances	corp	1	500	36	536	774	3336	3058	1	500	74	574	1471	4654	6125	1	500
629	Rostash R.P.	St. Paul	Meats	Prop	1	500	2262	2762	45243	54376	99619	1	500	6120	6620	111207	124619	136821	1	500
745	Rossman John	Minneapolis	clothing	Indiv	1	500	2223	2723	44454	108718	153472	1	500	3340	3840	66843	85998	158841	1	500
619	Rothschild	Minneapolis	clothing	corp	3	1500	98794	100294	574313	708195	1282508	3	1500	694799	696294	1364798	1633016	2997814	3	1500
673	Royal Typewriter Co	New York 2 Bal Rms	Typewriters	corp	2	1000	686	1686	13708	17091	30819	2	1000	2047	3047	40737	79965	120902	1	500
785	Ruff Bros	Minneapolis	Grocery	corp	2	1000	4247	5247	84941	114977	199918	2	1000	13286	13286	172863	269702	442565	2	1000
774	Rubinson Inc	New York 370 W. 35	R & W	corp	2	1000	5689	6689	166190	80397	187287	1	500	9667	10167	146666	183831	330497	1	500
	St Clair Stores	Owatonna	Gen Mdse	corp	2	1000	2878	3878	57565	90335	147900	2	1000				Contract			
	St Paul Glass Co	St. Paul	N.L.C.		1	500	343	843	6864	5797	12661	1	500		500		N.L.C.			
637	St. S. Auto Parts Co	Duluth	Auto Parts	corp.	3	1500	264	1764	5777	138380	143657	3	1500	945	2445	18913	94413	136326	3	1500
770	Salets Dept Store	Mankato	Gen Mdse	Prop	3	1500	14200	15700	191496	—	—	5	2500	46274	48774	381374	131764	503136	6	3000
658	Saltzman - Linoff	Minneapolis	Gen Mdse	corp	4	2000	16199	18199	207498	54629	262627	4	2000	54793	56793	419188	158434	578622	4	2000
697	Sample Shoe Store	Mankato	Shoes	Indiv	1	500	884	1384	17677	25274	42951	1	500	1055	1555	21106	—	—	1	500
558	Sapiro Bros Inc	Minneapolis	R & W.	corp	2	1000	3053	4053	61072	64413	125485	2	1000	7402	8402	174021	133219	307240	2	1000
	Sardeson-Haviland Co	Chicago 222 W Adams	N.L.C.		1	500	624	1124	12477	24076	36703			NLC						
516	Sattler + Anderson	Worthington	Grocery	Prop	1	500	966	1466	19393	22041	41363	1	500	1908	2408	38162	49229	87491	1	500
632	Savage C. M. W.		Gen Mdse	corp	10	6000	7317	13317	173134	353037	476211	8	4000	7664	20064	210687	829084	1039771	8	4000
567	Savelamen Bros Inc	Virginia	Jewelry	Corp	2	1000	1571	2571	31423	24700	56123	2	1000	2328	3328	44550	36358	79908	2	1000
668	Sawabel - Pfefferle	Alexandria	Variety Store	Prop	2	1000	754	1754	15155	31774	46929	2	1000	713	1713	14261	16361	30622		N.L.C.
561	Schiff Co	Columbus	Shoes	corp	3	1500	5381	6881	103808	107187	210990	3	1500	4870	6370	97409	103664	201071	4	2000
	Schlenger Motor Co	St Clara	Auto									1	500	51	551	1025	111567	111597		—
	Schon Bros	Duluth	N.L.C.		1	500	116	616	2314	3017	5331	1	500		500					N.L.C.
893	Schulte Bros Store Co	Chicago	50 & $100	corp	9	4500	23764	28264	258459	45156	303615	9	4500	57864	62364	431454	89050	520804	8	None
687	Sears Roebuck Co	"	Gen Mdse	corp	44	22000	72864	94864	449456	—	—	44	22000	248016	270016	888359	—	—	44	22000
711	Seg Louis Store Inc	Nation	Gen Mdse	corp	5	2500	5499	7999	100490	25674	1305694	5	2500	16003	18503	206689	50979	257668	5	2500
501	Senske + Co. Geo E.	Morgan	Gen Mdse	Indiv	1	500	539	1039	10656	13941	24597	1	500	577	1077	11541	15171	26712	1	500
530	Sigmond + Sons Inc	Jordan	Clothing	corp	1	500	138	638	2765	8521	11286	1	500	261	761	8272	15205	20425	1	500
591	Silverberg Bros	Brown City	Gen Mdse	corp	44	22000	66154	88154	1161457	394647	1555794	5	2500	25918	28418	277784	90430	363214	5	2500
736	Simonet Sr. Carpet Co	Stillwater	Furniture	corp	7	3500	8322	11822	166304	351500	517804	1	500	1511	2011	30217	73761	103978	1	500
618	Singer Sewing Mach Co	St. Paul	machines	corp	16	15000	44300	59300	860034	91170	951772	16	15000	13510	18510	185095	21800	206895	15	13500
570	Smith - Bunt Co	Minneapolis	Cigars	corp	1	500	133	633	7652	7267	9919	1	500	299	799	5979	13988	19967	1	500
594	Smith L.C. - Corona Typ	Syracuse NY	Typewriters	corp	1	500	548	1048	109655	34165	451830	1	500	1181	1681	23628	48939	72563	1	500
543	Spalding Bros	Chicago	Sport Goods	Corp	1	500	193	693	3853	10794	14647	1	500	262	762	5733	18908	24141	1	500
	Spary + Hutchinson	New York	N.L.C.		1	500		500						NLC						
509	Spurgeon Mfg. Co.	Chicago	Gen Mdse	corp	4	2000	3845	5845	76910	28862	105772	4	2000	10955	12955	154553	56127	215680	4	2000
544	Standard Clothing Co	Minneapolis	Clothing	corp	2	1000	4359	5359	87175	431303	518378	2	1000	4183	5183	83678	871070	954698	1	500
574	Stapleton Honest	Duluth	Shoes	corp	1	500	98	598	1965	30948	32913	1	500	264	764	5288	86350	91635	1	500
661	Star Grocery	Litchfield	Groc & Mkt	Prop	1	500	1249	1749	24959	45103	70062	2	1000	2735	3735	54708	92947	147655	2	1000
550	Steenerson Bros Hdw Co	Moorhead	Hdwe - Furn	corp	6	3000	607	3607	171141	8450	20591	7	3500	1107	4607	22142	31704	53846	7	3500
573	Stevenson Inc L.T.	St. Paul	R & W	corp	9	4500	25273	29773	268484	62616	331100	9	4500	95580	100080	542310	140177	682487	9	4500
624	Stillman Co.	Minneapolis	Groc.	Indiv	1	500	1201	1701	24465	153647	178112	1	500	3917	4417	78246	104746	183492	1	500
431	Strassman Hdwe Co	Winton	Hdwe	corp	1	500	797	1297	15937	7927	23864	1	500	1214	1714	24370	16600	40870	1	500

	Name of Claim	City of Headquarters		Kind of business	Conducted by	1933 Number of Taxable Stores	1933 Under Sec. 2a	1933 Under Sec. 2b	1933 Total Tax	1933 Taxable Gross Sales	1933 Exempt Gross Sales	1933 Total Gross Sales	1934 Number of Taxable Stores	1934 Under Sec. 2a	1934 Under Sec. 2b	1934 Total Tax	1934 Taxable Gross Sales	1934 Exempt Gross Sales	1934 Total Sales	1935 Number of Taxable Stores	1935 Under Sec. 2a
	Sterne Jay Corp.	New York		Tires	corp.	1	500			50	See Kelly-Springfield Tire Co.											
743	Swanson Wallpaper Co	Mankato		Wallpaper	corp.	1	500	327	827	6438	36721	43159	1	500	837	1337	16641	46257	63305	1	500
580	Sward-King Drug Co	Springfield		Drugs		2	1000	1777	2777	23539	12861	36400	2	1000	3431	4431	68618	27856	96474	3	1500
796	Sweeney Tom Sec.	Minneapolis		Cigars	corp	4	3000	1947	4947	31938	11048	42986	6	3000	4063	7063	81269	25913	107182	5	2500
	System Drug Co	"		Drug	Dept.	3	1500	847	2347	16944	7507	24451	3	1500		1500					N.C.
846	Snyder Cut Rate Drug	"		Drugs	Prop.	1	500	30000	30500	248813	48039	77906	4	2000	4605	4805	381073	340900	961973	4	2000
811	Sweeney Tom - Smith-B	"		cigars	Indiv. corp	1	500	363	863		Statement		1	500	956	1456		Statement		1	500
820	Sovanberg - Bluff	"		Auto	Prop.	1	500	725	1225	14509	167970	182479	1	500	1534	2034	30672	306231	336903	1	500
846	Schaelle G. F.	Alexandria		Variety	Indiv.				N.Y.C.							N.Y.C				1	500
852	Svedberg H.C.	Red Wing		Gro. Meat	Indiv.				N.Y.C.				1	500	827	1327	16551	139191	159742	1	500
	Thomas Markets C	St. Paul	141 W 6	changed name					N.Y.C.				2	1000	100	1100	1494	15198	17192		C.N.
764	Thomas Stores	Minneapolis		Foods	corp	21	23000	195345	218345	800574	72306	872876	22	30000	107606	137606	1746266	141166	1887432		
698	Thorpe Co J J	Duluth		Groceries	corp	2	1000	1481	2481	29670	—	—	2	1000	3437	4437	68738	83815	152553	2	1000
783	Tiger Stores	Ely		Auto Supplies	Indiv.	1	500	481	981	9648	15685	25309	1	500	1063	1563	21269	43492	63761	1	500
663	Tiger Stores	Cloquet		Auto Supplies	Indiv.	1	500	595	1095	11893	19072	30965	1	500	1497	1997	24941	36860	66801	1	500
773	Tilli Bros Packing Co	Gary	Ind.	Meats	corp.	2	1000	2018	3018	40366	34441	74807	2	1000	3740	4740	74878	64759	139587	2	1000
673	Toledo Scales Co	Toledo	Ohio	scales	corp.	1	500	193	693	3855	10943	14798	1	500	264	764	5272	18841	24113	1	500
589	Twin City Distributors Inc	New York	511 Canal St	Paints-Oil-Wall	corp	1	500	1970	2470	39418	72543	111961	1	500	4862	5362	97242	183085	280327	1	500
549	Underwood Elliott Fisher Co	New York	63 Dewey	machines	corp	4	2000	1306	3306	26115	77590	103705	3	1500	2254	3754	45073	124948	170021	3	1500
	Union Outlet Sales Co	"	306 W	Glass	corp	1	500	590	1090	11795	11962	23757	1	500		500					C.N.
610	Union News Co	"	330 W. 42	Newspapers	Corp	4	2000	1798	3798	35951	4963	40914	3	1500	3238	4738	64757	10000	74757	2	1000
510	United Cigar Stores	"	330 W. 42	Tobacco	Corp	1	500	624	1124	17479	14471	26950	1	500	1185	1685	23708	27848	51656	1	500
626	United Federal Stores	Minneapolis		clothing	corp	1	500	976	1476	19532	44291	63823	1	500	1246	1746	24919	28919	53838	1	500
812	United Mine Stores	Rochester	Minn.	Furnishings	Prop	1	500	388	888	7351	8315	16066	1	500	462	962	9238	14234	23472		N.C.
601	Unity Mills Dept Co	Minneapolis		Flour-Feed	corp.	9	4500	1737	6237	34747	7451	42198	9	4500	3761	8261	78280	27065	105345	8	4000
703	Walgreen Co	Chicago		Drugs	corp.	16	15000	355887	370887	1028887	116241	1145128	16	15000	1379898	1394898	2048898	211675	2260573	22	3000
635	Wallace Music Co	Fairmont		Gen Mdse	corp	1	500	1932	2432	38634	2025388	2063022	2	1000	4613	5613	93269	219042	312311	3	1000
815	Warren Stores	Minneapolis		Grocery	corp	18	18000	22581	40581	250536	47241	297777	15	13500	47000	60500	385440	94754	480194	14	12000
746	Warman H J	Watkins		Notions	Corp	1	500	407	907	8142	—	—	1	500	500	1000	10000	23081	33081	1	500
587	Washington Store Inc	Chicago	33 W Mad	Men Furnish.	Corp	4	2000	2648	4648	52950	22664	75614	4	2000	5908	7908	109080	47942	157022	4	2000
581	Weber - Judd Co	Rochester		Drug	corp.	2	1000	2537	3537	50743	70990	121733	2	1000	5672	6672	106716	150209	256925	2	1000
643	Western Auto Supply	Kansas City		Auto Supplies	Corp	6	3000	31091	34089	305486	87940	393426	6	3000	10744	13744	164843	175047	814870	6	3000
568	Westlunds Inc	Center City		Stores	corp	3	1500	4822	1982	9651	—	—	3	1500	1306	2806	26124	—	—	3	1500
834	West Grocery	Rockford		Grocery	Indiv.	1	500	260	760	5629	19005	24634	1	500	925	1425	18500	40000	58500	1	500
511	White Castle System Inc	Columbus	O.	Lunch	corp	15	13500	44184	179184	809725	—	—	15	13500	13605	27105	186050	—	—	15	13500
	White Co	Cleveland	O.	Truck Parts	corp	1	500		500							N.L.C.					
540	White Grove Planing	Virginia		Drugs	corp	1	500	740	1240	14803	8083	22886	1	500	1470	1970	29803	17528	46931	1	500
	White Tower System	Pittsburg		Change name		6	3000	1758	4758	35169	6573	41742	6	3000		3000					C.N.
647	Willys - Overland Co	Toledo	O.	Auto Parts	corp	2	1000	375	1375	7492	8762	16254	2	1000	705	1705	14101	16016	30117	2	1000
728	Winnebago Cash Store	Winnebago		Grocery	Indiv.	1	500	727	1227	14533	—	—	1	500	1144	1644	27879	—	—	1	500
759	Winston Reinel	Minneapolis		Foods	corp																
780	Wirth Markets Inc	"		Foods	Corp	3	1500	21547	23047	243653	360685	604338	3	1500	3141	4691	63820	51119	114939		
720	Woolf Shoe Co	St Louis	Mo.	Shoes	corp	4	2000	4550	6542	90850	29439	120289	4	2000	21523	23523	243485	102059	345544	4	2000
779	Woolff Store Inc	Washington		Dept. Store	Indiv	3	1500	3628	5128	72562	61956	134518	3	1500	4667	6167	93342	123944	216286	2	1000
648	Woolworth Co W G	St Louis	Mo	Gen Mdse	corp	9	4500	23697	28197	257980	21086	279066	9	4500	27963	32463	286488	24751	313239	8	4000
517	Woolworth Co F W	New York	233 B'way	Gen Mdse Inc	corp	45	22500	126147	148647	1932141	540370	2472511	45	18250	314580	332830	4381804	1088845	5804649	45	18250

C.N changed name

	Name of Chain	City of Headquarters	Kind of business	Conducted by	1933 Number of Taxable Stores	Under Sec 2a	Under Sec 2b	Total Tax	Taxable Gross Sales	Exempt Gross Sales	Total Sales	1934 Number of Taxable Stores	Under Sec 2a	Under Sec 2b	Total Tax	Taxable Gross Sales	Exempt Gross Sales	Total Sales	1935 Number of Taxable Stores	Under Sec. 2a
504	Woonsey Hat Store	New York 740 Edgey	Hats	Corp	7	3500	4803	8303	96058	5105	101163	7	3500	12590	16090	175899	29808	265707	6	3000
641	Wheelan Studios	370-7 av	Photos	Indiv	1	500	473	973	9457	18968	28425	1	500	602	1102	12048	22798	34846	1	500
831	Walnut Grove Grocery Co	Walnut Grove	Grocery	Pnp	2	1000	569	1569	11368	12875	24243	3	1500	1698	3198	33948	14129	48077	3	1500
604	York Crochers	Clara City	Gen Mdse	Indiv	1	500	659	1159	13166	20371	33537	1	500	1380	1880	27582	47876	75458	1	500
789	Zagor & Co	Minneapolis	R to W	Pnp															1	500

[fol. 912] PLAINTIFF'S EXHIBIT "B"

Department of Commerce

Washington, August 23, 1935

I hereby certify that the annexed is a true copy of the original report of the Census of Retail Distribution for the State of Minnesota, taken as a part of the Fifteenth Decennial Census of the United States in 1930, which is on file in the Bureau of the Census.

W. L. Austin, Director of the Census. (Official title).

Office of the Secretary

I hereby certify that W. L. Austin, who signed the foregoing certificate, is now, and was at the time of signing, Director of the Census, and that full faith and credit should be given his certificate as such.

In witness whereof, I have hereunto subscribed my name, and caused the seal of the Department of Commerce to be affixed this 23rd day of August, one thousand nine hundred and thirty-five.

E. W. Libbey, Acting Assistant Secretary of Commerce.

[Seal.]

[fols. 913-916] U. S. Department of Commerce
Roy D. Chapin, Secretary

Bureau of the Census
W. M. Steuart, Director

Fifteenth Census of the United States
Census of Distribution

Retail Distribution State Series

Minnesota

[fols. 917-921] Types of operation.—Single-store independents and 2-store and 3-store independents are shown separately. Between them and the local chains is a classification called local branch systems.

A branch system differs from a local chain, either of which can have four or more units, mainly in the method of merchandising and the relation of the various stores

to each other. A branch system always revolves around a dominant parent store, from which the branches grew and from whose stocks the branches draw most of their merchandise for sale. A local chain is a group of substantially similar stores under the same ownership and operation, merchandised from a central warehouse or other common point or points, but not from the stocks of a parent store. In a local chain, a majority of its stores are located in and around one city.

A sectional chain is one whose stores are located in a number of cities so that its interests are more than local, but a large majority of whose stores is located within one geographic division, or an equivalent area. Chains operating entirely—or substantially so—within the Pacific Coast States, or in New England, or in the Southern Atlantic States, or any other distinct section of the country are sectional chains.

National chains are those operating in two or more geographic divisions, whose interests and operations are broader than those of any one section of the country.

Manufacturer-controlled chains are operated to distribute at retail the products of a manufacturer, or a group of manufacturers who are joint owners of the stores. Manufacturer-controlled chains are primarily interested in furthering the sale of predetermined commodities, in contrast to the primary interests of most stores and chains in determining customer-preference and buying merchandise to sell which will most nearly fill that want. The interests of the two classes of merchandisers are different, and require separate classification. Manufacturer-controlled chains are not classified as to the extent of territory covered. This classification includes sales branches of manufacturers, of specialties, such as typewriters and plumbing fixtures, sold directly to the public at retail.

Utility-operated stores are those operated by public utility companies and are mainly for the sale of electric and gas household appliances.

The classification "mail-order houses" is limited to catalogue business. It does not include the retail-store business of the companies usually known as mail-order concerns. Such retail-store business is properly classified under the heading of national chains.

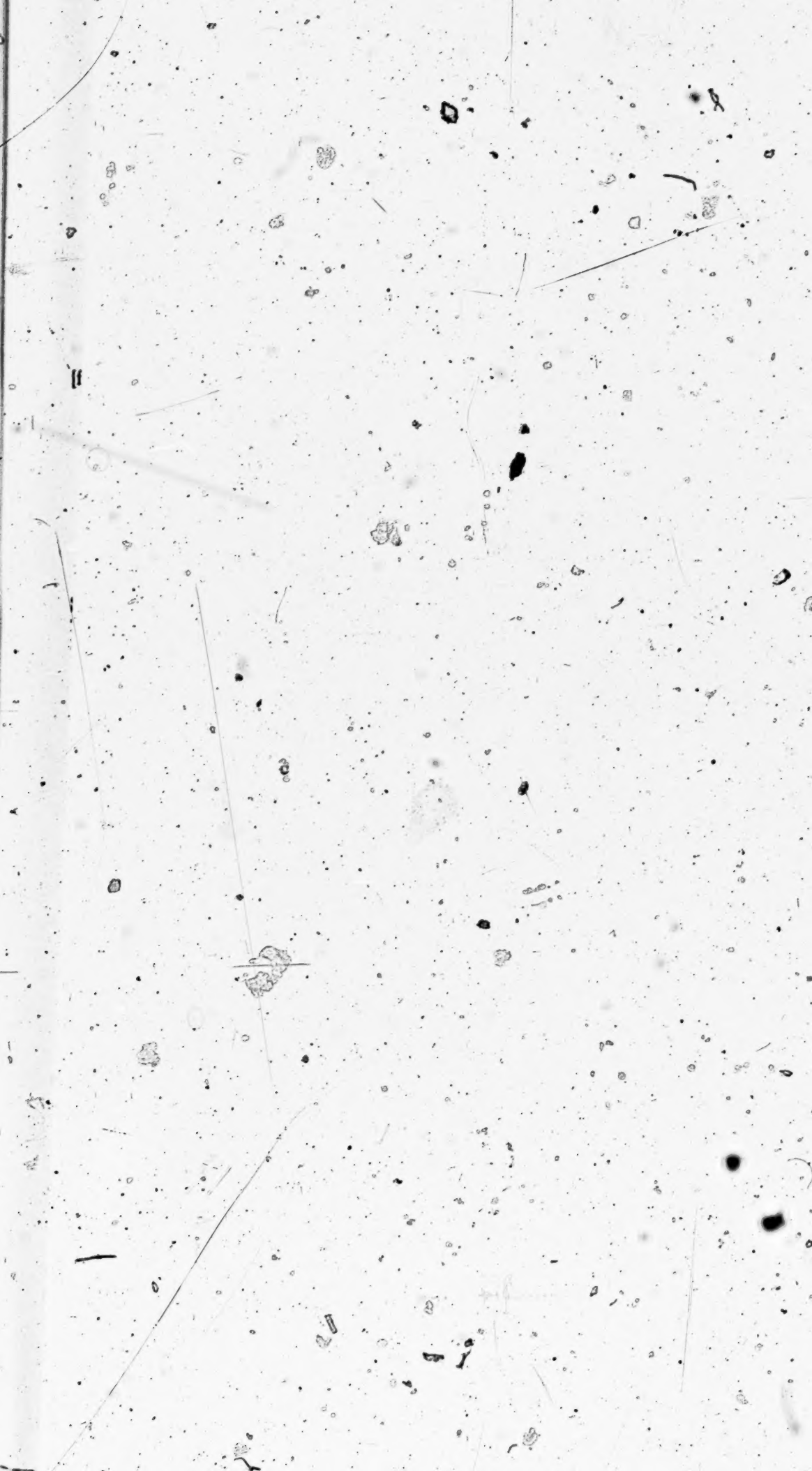
Country buyers shown in the retail reports are retailers who combine with their store business the function of buy-

ing and assembling farm produce. This operation is primarily that of assembling and shipping to wholesalers and processors. This type classification should not be confused with country general stores, which is a kind-of-business classification.. Retailers who operate partially as country buyers of farm products are classified in the retail tables in accordance with their major kind of business. Their total business is included under the heading of sales but that portion of their business which is country buying is shown in Table 11B.

[fol. 922] Operating Expenses, by Kinds of Business

Number of stores	Total operating expenses per cent to total sales
30,725	23.38
7,455	18.51
55	42.40
1,149	27.79
13	17.43
12	10.54
38	31.71
22	15.51
102	19.66
3,576	15.95
792	16.86
314	17.41
6	51.26
1,103	16.76
225	33.70
31	31.67
3	(x)
4	(x)
10	51.11
2,413	13.71
194	13.22
1,036	13.35
1,183	13.99
[fol. 923]	
864	25.13
19	30.69
82	29.12
4	(x)
276	24.63
3	(x)
30	13.36
152	23.06
7	30.27
290	26.46
5,853	21.33
1,351	18.24
31	35.29
113	16.20
228	26.81
97	43.28
220	30.41
1,861	19.76
261	22.56
151	22.40
3	(x)
5	29.14
9	30.28
78	66.86
1,407	43.50
10	62.57
24	41.25
4	(x)
2,168	31.80
38	25.43
12	39.32
170	30.08
391	27.77
151	32.30
240	30.39
11	33.69
54	33.27
7	47.54
9	24.43
308	46.68
283	51.61
13	56.30
24	35.82
28	32.32
425	29.29
1,201	32.78
255	33.03
232	26.51
144	22.25
15	36.15
28	30.73
106	43.55
24	31.13
4	(x)
4	(x)
6	52.70
4	(x)
12	46.83
4	(x)
9	41.37
10	51.50
8	43.18
260	35.12
73	37.87
[fols.924-930]	
2,441	36.61
56	39.54
1,166	33.76
746	37.78
3	(x)
96	34.21
32	35.46
235	38.86
107	44.39
1,761	23.22
884	18.48
168	16.63
82	44.90
8	38.08
108	45.96
47	43.14
315	35.74
149	43.80
6,350	24.88
810	24.85
415	14.83
21	9.96
353	15.69
269	12.90
194	33.45
14	18.85
36	14.48
92	14.29
17	7.85
71	12.44
29	37.90
9	21.77
601	34.76
161	22.02
292	21.36
131	63.30
542	26.61
537	27.67
115	38.99
4	(x)
34	36.45
21	38.92
16	35.81
10	37.59
535	38.45
14	38.13
47	31.24
51	38.03
30	28.00
33	35.52
24	32.92
19	41.55
61	45.72
22	31.21
11	28.48
7	27.70
38	47.80
11	27.34
54	37.39
597	(x)
219	40.75

(Here follows 1 paster, side folios 931-932)



[fols. 931-932]

Table 5A.—The State—Retail Distribution by Types of Operation

Number of Stores, Personnel, Expenses, Stocks, and Sales

Type of operation	Number of stores	Proprietors and firm members (not on pay roll)	Number of Employees: Full time	Number of Employees: Part time	Pay Roll: Total (full time and part time)	Pay Roll: Part time only	All other reported expenses (includes rent)	Stocks on hand, end of year (at cost)	Net Sales (1929): Amount	Net Sales (1929): Per cent of total sales
Total	30,725	30,903	81,729	14,527	$103,816,306	$3,438,955	$105,837,630	$166,623,140	$1,051,929,663	100.00
Single-store independents	23,774	27,249	52,576	9,757	67,078,994	2,358,677	65,905,251	105,651,400	669,623,398	63.66
2-store independents	810	530	5,244	592	7,210,294	149,291	7,151,013	8,976,080	60,353,297	5.74
3-store independents	286	98	1,978	222	2,657,330	61,287	2,840,808	3,796,030	20,810,221	1.98
Local branch systems	5	.....	50	1	78,700	120	86,200	99,840	637,531	.06
Local chains	752	40	2,487	562	3,477,498	121,332	2,973,700	5,453,390	33,201,470	3.16
Sectional chains	1,405	.....	3,245	1,050	4,646,422	247,657	5,031,556	6,731,710	49,272,196	4.68
National chains	769	.....	5,891	1,100	6,725,285	243,977	8,203,316	7,676,160	54,940,533	5.22
Other types of operation:										
Mail-order houses (catalogue only)	13	12	3,894	27	3,964,673	5,381	6,107,639	7,866,140	54,392,416	5.17
Direct selling (house-to-house)	61	35	598	3	906,717	820	332,860	111,400	3,012,995	.29
Rolling stores	7	3	42	.....	51,749	.....	9,862	29,910	115,307	.01
Industrial stores (including commissaries)	4	.....	13	.....	15,370	.....	4,380	24,030	263,910	.02
Leased departments—independent operators	11	3	37	7	63,811	3,128	50,202	112,970	338,186	.03
Leased-department chains	72	10	561	30	672,429	5,055	1,025,417	386,290	4,166,555	.40
Utility-operated retail stores	49	1	248	73	361,031	25,323	392,428	466,970	2,026,380	.19
Manufacturer-controlled chains	75	.....	980	1	1,537,863	100	678,136	1,003,150	5,934,576	.56
Cooperative stores [1]	132	.....	467	78	625,666	13,850	463,168	1,556,080	8,610,519	.82
Cooperative buying associations [1]	42	.....	83	12	141,373	3,137	74,172	262,240	2,209,900	.21
Retail country buyers [1]	2,299	2,839	2,921	859	3,023,791	171,639	3,891,617	15,666,170	74,231,406	7.06
Retailers—wholesalers [1]	151	74	401	152	562,182	28,166	602,529	756,320	7,691,406	.73
All other types of operation	8	9	13	1	15,128	15	13,376	2,860	97,461	.01

[1] These classifications used only in rural areas and cities having less than 10,000 inhabitants. These stores are usually independently operated.

[fols. 933–1007]

Census of Distribution

Table 6.—The State—Seventeen Kinds of Business, by Types of Operation

[An (x) indicates that the amount must be withheld to avoid disclosure of individual operations, but it is included in the totals]

Kind of business	Total	Single-store independents	2 and 3 store independent and local branch systems	Local chains	Sectional chains	National chains	Other types
Department stores:							
Number of stores	105	32	6	2	1	57	7
Annual net sales	$133,696,188	$59,533,610	$3,508,017	(x)	(x)	$15,653,354	$54,518,740
Per cent of total sales	100.00	44.53	2.62	(x)	(x)	11.71	40.78
Variety, 5-and-10, and to-a-dollar stores:							
Number of stores	290	181	3	4	26	73	3
Annual net sales	$14,987,609	$2,141,499	$35,335	$106,053	$1,186,790	$11,486,135	$31,797
Per cent of total sales	100.00	14.29	.23	.71	7.92	76.64	.21
Men's and boys' clothing and furnishings stores:							
Number of stores	611	513	44	5	20	27	2
Annual net sales	$22,550,815	$15,773,451	$2,006,725	$290,878	$1,524,245	$2,716,516	$239,000
Per cent of total sales	100.00	69.95	8.90	1.29	6.76	12.04	1.06
Family clothing stores—men's, women's, and children's:							
Number of stores	151	119	9	1	5	9	8
Annual net sales	$12,252,434	$5,134,560	(x)	(x)	$432,327	$471,615	$653,737
Per cent of total sales	100.00	41.91	(x)	(x)	3.53	3.85	5.34
Women's ready-to-wear specialty stores—apparel and accessories:							
Number of stores	240	164	35	6	17	8	10
Annual net sales	$21,649,249	$14,439,626	$1,583,095	$261,163	$1,682,824	$2,151,023	$1,531,518
Per cent of total sales	100.00	66.70	7.31	1.21	7.77	9.94	7.07

Census of Distribution—Continued

Table 6.—The State—Seventeen Kinds of Business, by Types of Operation

[An (x) indicates that the amount must be withheld to avoid disclosure of individual operations, but it is included in the totals]

Kind of business	Total	Single-store independents	2 and 3 store independent and local branch systems	Local chains	Sectional chains	National chains	Other types
Shoe stores:							
Number of stores	477	355	22	7	13	58	22
Annual net sales	$12,401,161	$6,145,681	$1,641,126	$108,000	$708,454	$2,760,724	$1,037,176
Per cent of total sales	100.00	49.56	13.24	.87	5.71	22.26	8.36
Furniture stores:							
Number of stores	631	574	45	4	3	1	4
Annual net sales	$28,051,828	$22,288,908	$4,880,916	$493,914	(x)	(x)	$162,567
Per cent of total sales	100.00	79.46	17.40	1.76	(x)	(x)	.58
Radio and music stores:							
Number of stores	333	298	14	15	1	2	3
Annual net sales	$9,300,357	$7,339,214	$1,056,151	$370,283	(x)	(x)	$123,565
Per cent of total sales	100.00	78.91	11.36	3.98	(x)	(x)	1.33
Grocery stores (without meat):							
Number of stores	3,576	2,837	68	36	251	19	365
Annual net sales	$76,998,267	$53,787,528	$2,699,976	$1,416,356	$9,800,269	$1,506,822	$7,787,316
Per cent of total sales	100.00	69.85	3.51	1.84	12.73	1.96	10.11
Combination stores (groceries and meats):							
Number of stores	1,106	846	49	21	63	14	113
Annual net sales	$52,363,642	$35,120,561	$5,477,185	$2,819,567	$4,091,360	$943,647	$3,911,322
Per cent of total sales	100.00	67.07	10.46	5.39	7.81	1.80	7.47

Restaurants, cafeterias, and lunch rooms:							
Number of stores	1,968	1,857	74	16	3	6	12
Annual net sales	$32,187,249	$27,124,562	$3,187,878	$1,421,308	$151,294	$124,887	$177,320
Per cent of total sales	100.00	84.27	9.90	4.42	.47	.39	.55
Cigar stores and cigar stands:							
Number of stores	771	725	20	11	2	10	3
Annual net sales	$9,639,142	$7,363,410	$1,268,535	$377,923	(x)	(x)	$234,459
Per cent of total sales	100.00	76.39	13.16	3.92	(x)	(x)	2.43
Filling stations:							
Number of stations	2,273	1,121	87	103	520	314	128
Annual net sales	$46,720,813	$20,753,662	$2,599,176	$2,980,459	$10,394,028	$4,663,170	$5,330,318
Per cent of total sales	100.00	44.42	5.56	6.38	22.25	9.98	11.41
Coal and wood yards—ice dealers:							
Number of yards	423	371	22	12	3	.....	15
Annual net sales	$25,962,215	$18,860,818	$3,407,697	$3,123,731	$221,433	.....	$348,536
Per cent of total sales	100.00	72.65	13.13	12.03	.85	.....	1.34
Drug stores:							
Number of stores	1,079	974	64	16	.....	25	.....
Annual net sales	$28,028,252	$21,801,107	$2,302,708	$691,028	.....	$3,233,409	.....
Per cent of total sales	100.00	77.78	8.22	2.46	.....	11.54	.....
Hardware stores:							
Number of stores	810	776	18	4	1	1	10
Annual net sales	$20,415,382	$18,419,960	$1,537,006	(x)	(x)	(x)	$267,517
Per cent of total sales	100.00	90.23	7.53	(x)	(x)	(x)	1.31
Jewelry stores:							
Number of stores	545	523	16	4	.....	.....	2
Annual net sales	$8,512,868	$7,554,502	$850,211	$56,823	.....	.....	$51,332
Per cent of total sales	100.00	88.74	9.99	.67	.....	.....	.60

[fol. 1008] PLAINTIFF'S EXHIBIT "C"

Department of Commerce

Washington, September 4, 1935

I hereby certify that the annexed is a true copy of the original report entitled "Census of American Business, Retail Distribution, 1933, Chains and Independents and Other Types of Operation," which is on file in the Bureau of the Census.

W. L. Austin, Director of the Census.
(Official Title)

Office of the Secretary

I hereby certify that W. L. Austin, who signed the foregoing certificate, is now, and was at the time of signing, Director of the Census, and that full faith and credit should be given his certificate as such.

In witness whereof, I have hereunto subscribed my name, and caused the seal of the Department of Commerce to be affixed this 4th day of September, one thousand nine hundred and thirty-five.

E. W. Libbey, Acting Assistant Secretary of Commerce.
[Seal.]

[fol. 1009] U. S. Department of Commerce
Daniel C. Roper, Secretary

Bureau of the Census, William L. Austin, Director

Census of American Business
Retail Distribution: 1933

Chains and Independents
And Other Types of Operation

State Summaries and Eighteen Kinds of Business

Department stores, variety stores, men's clothing and furnishings stores, family clothing stores, women's apparel stores, shoe stores, furniture stores, household appliance stores, radio stores, grocery stores (without meats), combination stores (groceries and meats), restaurants, cigar stores, motor-vehicle dealers, filling stations, drug stores, hardware stores, jewelry stores.

[fol. 1010] This is one of a series of reports presenting the findings of the 1933 Census of American Business. The statistics were collected in 1934 by a field canvass of retail stores in every state, city and county in the United States, with funds provided by the Federal Civil Works Administration. They cover the operations of retailers during the year 1933.

[fol. 1011] ANALYSIS OF THE RETAIL CENSUS FOR 1933
ACCORDING TO TYPES OF OPERATION

(Chains, Independents and other Types)

This special report of the Retail Census, a part of the Census of American Business presents an analysis of the 1,526,119 stores enumerated in 1933 by types of operation. The following summary table shows the number of stores and sales by types of operation in 1933 as compared with 1929:

Comparison of Retail Stores by Types of Operation

(Sales are stated in thousands of dollars)

Type	Number of Stores		%	Sales				%
	1933	1929	Change	1933	Ratio	1929	Ratio	Change
U. S. Totals	1,526,119	1,543,158	−1.1	$25,037,225	100.0	$49,114,653	100.0	−49.0
Independents	1,349,337	1,375,509	−2.0	$17,826,562	71.2	$38,081,504	77.5	−53.2
Chains	141,603	148,037	−4.3	6,312,769	25.2	9,834,846	20.0	−35.8
Direct selling	7,026	1,661	+323.0	187,368	.7	93,961	.2	+99.4
Mail-order	311	271	+15.0	244,381	1.0	515,237	1.0	−52.6
Commissaries	2,719	1,347	+101.0	95,578	.4	115,583	.3	−17.3
Utility-operated	4,127	4,053	+1.8	76,079	.3	163,371	.3	−53.4
Other types	20,996	12,280	+71.0	294,488	1.2	310,151	.7	−5.0
Market and								
Roadside stands		4,502				18,614		
Itinerant vendors		1,384				7,130		
Rolling stores		244				3,971		
Leased departments		4,271				154,024		
Cooperatives		1,709				116,995		
Unclassified		170				9,417		

Shown for each type, in addition to the number of stores, are data covering volume of sales, the number of proprietors, number of full-time employees, amount of payroll, average annual earnings of full-time employees, and total reported expense. The latter is exclusive of any compensation or return for the services of proprietors engaged in their own stores, usually in lieu of employees.

In 1933 there were 26,000 fewer independent stores and 6,400 fewer chain stores than in 1929. On the other hand there were 5,400 more direct-selling (house-to-house) retailers, 40 more mail-order houses, and about 10,000 more stores of other types, including leased departments, cooperatives, etc.

[fols. 1012-1017] Factors in Sales Decline

The sales of chains increased in relative importance to other types of operation during the four years since the previous census. In 1929 chains did 20.0 percent of the total of all retail business of the country; by 1933 the ratio had increased to 25.2. Independents, which did 77.5 percent of the total business in 1929, accounted for 71.2 percent in 1933. The sales of independents decreased 53.2 percent, whereas the sales of chains decreased 35.8 percent.

The higher ratio of chain sales as a whole does not mean that the chains in all kinds of business have weathered the four years of depression better than independents. Much of the cause of the smaller aggregate decline in chain sales than in independent sales is the relatively smaller decline in the sales of those kinds of business in which chains prefer to operate—food, variety and drug stores, and filling stations.

In these four fields, which account for more than one-half of total chain store sales, the decline in sales between 1929 and 1933 (for chains and independents combined) averaged 34 percent, compared with 56 percent in all the other business fields together. In most of those kinds of business which experienced the greatest decline in sales volume, chains are a negligible factor.

(Here follows 1 paster, side folios 1018-1061)

[fol. 1018[

Retail Distribution: 1933

Table 3—United States

Eighteen Kinds of Business by Types of Operation

Census of American Business

102 Pages (page 3)

Type of Operation	Number of Stores	Net Sales (1933) (000 Omitted)	Percent of Total Sales 1933	Percent of Total Sales 1929	Full-time Employees	Number of Props.	Payroll (000 Omitted) Total Including Part-time	Payroll (000 Omitted) Part-Time Only	Average Annual Earnings Per Full-time Employee	Total Reported Expenses[2] (000 Omitted)
Total—all types	1,526,119	$25,037,225	100.0	100.0	2,703,325	1,574,341	$2,910,445	$245,998	$986	$6,501,060
Independents	1,349,337	17,826,562	71.2	77.5	1,908,401	1,544,394	1,987,950	181,518	947	4,529,250
Chains	141,603	6,312,769	25.2	20.0	685,207	3,870	795,505	56,335	1,079	1,710,754
Direct selling (house-to-house)	7,026	187,368	.7	.2	36,658	6,655	47,247	1,385	1,251	76,606
Mail-order houses (catalog only)	311	244,381	1.0	1.0	27,752	199	24,786	546	873	68,446
Commissaries or company stores	2,719	95,578	.4	.3	6,873	1,415	8,020	631	1,075	13,399
Utility-operated stores	4,127	76,079	.3	.3	10,889	123	16,211	2,865	1,226	30,274
All other types (leased depts., coops., etc.)[2]	20,996	294,488	1.2	.7	27,545	17,685	30,726	2,718	1,017	72,331
Department stores[3]	3,535	2,538,258	....	....	364,105	783	386,462	26,485	990	828,887
Independents	1,428	1,708,445	67.3	72.1	279,979	750	296,888	16,946	1,000	604,698
Chains	2,057	605,722	23.9	16.7	59,517	17	68,455	9,246	995	166,094
Mail-order houses (catalog only)	35	219,978	8.7	11.2	24,233	12	20,670	258	842	57,335
Commissaries or company stores	11	3,298	.1		284	1	352	28	1,141	579
All other types	4	815	....		92	3	97	7	978	181
Variety, 5-and-10, and to-a-dollar stores	12,046	678,167	....	....	95,949	7,653	81,885	8,991	760	192,649
Independents	6,572	59,699	8.8	10.7	6,336	7,478	5,125	912	665	13,261
Chains	5,400	618,333	91.2	89.2	89,609	102	76,757	8,079	766	179,367
All other types	74	135	....	.1	4	73	3	....	750	21
Men's and boys' clothing and furnishings stores	19,491	489,104	....	....	41,853	19,055	57,858	3,840	1,291	148,858
Independents	17,599	374,205	76.5	77.9	31,607	18,799	42,817	2,973	1,261	108,516
Chains	1,693	107,553	22.0	21.2	9,543	96	14,115	814	1,394	38,043
Direct selling (house-to-house)	24	153	....	.9	28	26	28	13	536	51
Mail-order houses (catalog only)	6	2,409	.5		293	4	236	....	805	795
All other types	169	4,784	1.0		382	130	662	40	1,628	1,453
Family clothing stores (men's, women's and children's)[4]	5,765	185,371	....	....	21,544	5,604	26,314	1,740	1,141	60,352
Independents	5,177	146,744	79.2	71.5	16,711	5,536	20,077	1,245	1,127	45,318
Chains	550	37,588	20.3	27.3	4,667	37	6,074	489	1,197	14,647
Direct selling (house-to-house)	20	214	.1	1.2	71	18	32	2	423	79
All other types	18	825	.4		95	13	131	4	1,337	308
Women's ready-to-wear specialty stores[3]	17,768	575,094	....	....	67,149	16,501	72,389	5,541	996	174,434
Independents	15,773	428,482	74.5	74.3	51,634	16,274	56,044	4,514	998	129,420
Chains	1,726	134,255	23.4	22.7	14,309	145	14,965	833	988	41,094
Direct selling (house-to-house)	62	1,367	.2	3.0	148	11	168	2	1,122	432
All other types	207	10,990	1.9		1,058	71	1,212	192	964	3,488
Shoe stores	18,836	424,592	....	....	34,679	14,406	45,455	4,247	1,188	125,543
Independents	13,386	197,345	46.5	53.5	16,015	14,108	20,609	1,841	1,172	54,094
Chains	4,442	196,249	46.2	38.0	15,664	124	21,681	2,016	1,255	62,341
Direct selling (house-to-house)	7	602	.2	8.5	27	3	42	3	1,444	124
Mail-order houses (catalog only)	10	473	.1		27	8	25	....	926	153
All other types	991	29,923	7.0		2,946	163	3,098	387	920	8,831
Furniture stores	17,418	553,503	....	....	66,238	18,825	84,804	3,799	1,223	207,409
Independents	16,728	468,338	84.6	83.9	56,413	18,700	71,284	3,598	1,200	171,879
Chains	570	78,418	14.2	14.2	8,965	26	12,308	140	1,357	32,883
Direct selling (house-to-house)	32	859	.2	1.9	237	33	305	37	1,131	461
All other types	88	5,888	1.0		623	66	907	24	1,382	2,186
Household appliance stores	9,761	198,662	....	....	38,010	4,189	44,639	4,388	1,057	81,932
Independents	3,426	65,880	33.2	....	3,394	4,021	10,796	1,261	1,136	22,634
Chains	1,355	42,669	21.5	....	13,226	12	12,291	392	900	20,934
Direct selling (house-to-house)	290	12,742	6.4	....	4,894	75	4,875	19	992	6,843
Utility-operated stores	3,976	73,160	36.8	....	10,622	41	15,742	2,673	1,230	29,398
All other types	214	4,211	2.1	....	874	40	935	43	1,021	2,123
Radio stores[5]	8,161	113,899	....	....	14,432	8,652	17,812	1,560	1,131	41,303
Independents	7,846	94,128	82.6	79.0	11,940	8,525	14,563	1,493	1,095	33,995
Chains	207	17,793	15.6	19.1	2,239	19	2,898	36	1,278	6,476
Direct selling (house-to-house)										

Independents										
Chains	570	78,418	14.2	14.2	8,965	20	[illegible]			
Direct selling (house-to-house)	32	859	.2		237	33	305	37	1,131	461
All other types	88	5,888	1.0	1.9	623	66	907	24	1,382	2,186
Household appliance stores[5]	9,761	198,662	....	....	38,010	4,189	44,639	4,388	1,057	81,932
Independents	3,926	65,880	33.2	....	8,394	4,021	10,796	1,261	1,136	22,634
Chains	1,355	42,669	21.5	....	13,226	12	12,291	392	900	20,934
Direct selling (house-to-house)	290	12,742	6.4	....	4,894	75	4,875	19	992	6,843
Utility-operated stores	3,976	73,160	36.8	....	10,622	41	15,742	2,673	1,230	29,398
All other types	214	4,211	2.1	....	874	40	935	43	1,021	2,123
Radio stores[5]	8,161	113,899	....	....	14,432	8,652	17,812	1,560	1,131	41,303
Independents	7,846	94,128	82.6	79.0	11,940	8,525	14,563	1,493	1,095	33,995
Chains	207	17,793	15.6	19.1	2,239	19	2,898	36	1,278	6,476
Direct selling (house-to-house)	20	300	.3		40	25	42	5	925	83
All other types	88	1,678	1.5	1.9	213	83	309	26	1,329	749
[fols. 1019–1061]										
Grocery stores (without meats)	163,538	$1,803,242	....	....	99,015	161,216	$113,590	$12,664	$1,019	$276,240
Independents	137,852	978,897	54.3	53.6	44,272	159,904	40,945	4,937	813	129,538
Chains	24,740	811,910	45.0	45.7	53,930	245	71,808	7,597	1,191	144,872
Direct-selling (house-to-house)	140	1,310	.1		233	156	229	7	953	403
Commissaries or company stores	152	1,011	.1	.7	64	151	55	5	781	99
All other types	654	10,114	.5		516	760	553	118	843	1,328
Combination stores (groceries and meats)	140,372	3,201,042	....	....	221,225	142,881	253,174	24,303	1,035	536,158
Independents	115,184	1,797,021	56.1	67.6	119,852	142,072	119,065	11,275	899	270,254
Chains	24,924	1,397,090	43.7	32.2	100,787	483	133,424	12,999	1,195	264,525
Direct-selling (house-to-house)	50	551	....		23	68	28	4	1,043	76
Commissaries or company stores	32	512	....	.2	48	37	46	3	896	70
All other types	182	5,868	.2		515	221	611	22	1,148	1,233
Restaurants and eating places[6]	170,434	1,324,387	....	....	341,348	198,209	248,034	19,827	669	539,328
Independents	166,596	1,122,882	84.8	86.1	280,814	197,684	200,068	17,774	649	433,876
Chains	3,377	196,800	14.9	13.6	59,457	161	46,943	1,902	758	103,335
All other types	461	4,705	.3	.3	1,077	364	1,023	151	810	2,117
Cigar stores and cigar stands	20,175	189,756	....	....	14,797	20,326	14,293	1,304	878	43,682
Independents	18,278	123,521	65.1	73.5	9,594	20,146	9,463	1,235	858	29,439
Chains	1,713	[illegible] 396	33.9	25.1	4,990	50	4,650	58	920	13,796
All other types	184	1,839	1.0	1.4	213	130	180	11	793	447
Motor-vehicle dealers[7]	30,646	2,127,720	....	....	190,691	33,823	204,818	6,276	1,041	420,212
Independents	30,219	2,013,692	94.6	....	180,273	33,792	190,660	6,043	1,024	391,036
Chains	409	112,703	5.3	....	10,306	21	14,019	232	1,338	28,877
All other types	18	1,325	.1	....	112	10	139	1	1,232	299
Filling stations	170,404	1,531,724	....	....	143,395	156,451	151,938	10,035	990	342,233
Independents	134,239	984,867	64.3	66.0	68,868	155,734	65,202	7,508	838	165,666
Chains	36,026	543,682	35.5	33.8	74,226	647	86,382	2,513	1,130	175,906
All other types	139	3,175	.2	.2	301	70	354	14	1,130	661
Drug stores	58,407	1,066,252	....	....	116,852	57,749	126,504	11,404	985	285,052
Independents	53,341	788,568	74.0	81.2	83,158	56,433	91,524	10,669	972	204,765
Chains	3,760	267,299	25.1	18.5	31,564	140	32,816	500	1,024	74,903
Direct-selling (house-to-house)	1,111	6,506	.6		1,619	1,027	1,493	96	863	2,951
Mail-order houses (catalog only)	51	2,233	.2	.3	331	42	476	129	1,048	1,928
All other types	144	1,646	.1		180	107	195	10	1,028	505
Hardware stores[8]	32,802	488,486	....	....	43,396	36,767	50,580	4,222	1,068	115,633
Independents	32,234	467,167	95.6	....	40,904	36,711	47,452	4,128	1,059	109,496
Chains	536	19,894	4.1	....	2,399	46	3,006	89	1,216	5,902
All other types	32	1,425	.3	....	93	10	122	5	1,258	235
Jewelry stores	14,313	175,066	....	....	20,338	14,370	29,620	1,637	1,376	73,521
Independents	14,050	163,886	93.6	93.0	18,780	14,289	27,497	1,605	1,379	67,808
Chains	191	10,359	5.9	6.4	1,454	11	1,975	26	1,340	5,377
All other types	72	821	.5	.6	104	70	148	6	1,365	336
All other kinds of business	612,247	7,372,900	....	....	768,309	656,881	900,276	93,735	1,050	2,007,634

See footnotes on Page 1-D

Census of American Business

Retail Distribution: 1933

Table 3—State of Minnesota

Eighteen Kinds of Business by Types of Operations

Type of Operation	Number of Stores	Net Sales (1933) (000 Omitted)	Percent of Total Sales 1933	Percent of Total Sales 1929	Full-time Employees	Number of Props.	Payroll (000 Omitted) Total Including Part-time	Payroll (000 Omitted) Part-Time Only	Average Annual Earnings Per Full-time Employee	Total Reported Expenses[1] (000 Omitted)
Total—all types	33,879	$585,102	100.0	100.0	62,195	35,916	$64,783	$5,516	$953	$144,800
Independents	30,416	449,490	76.8	79.3	46,915	35,513	47,948	4,444	927	108,418
Chains	2,881	103,997	17.8	13.5	11,458	74	13,140	894	1,069	27,678
Direct selling (house-to-house)	174	2,944	.5	.3	704	150	703	39	943	1,213
Mail order houses (catalog only)	5	20,309	3.5	5.1	2,272	1	2,005	22	873	5,417
Commissaries or company stores	3	32	.....	.2	4	6	5	1	1,000	7
Utility-operated stores	81	925	.1	.1	223	3	286	39	1,108	423
All other types	319	7,405	1.3	1.5	619	169	696	77	1,000	1,644
Department stores	77	72,969	.....	.....	10,099	10	10,350	512	974	22,147
Independents	28	40,413	54.7	47.1	6,741	10	7,008	304	995	13,566
Chains	46	12,340	17.2	11.7	1,093	.....	1,345	186	1,060	3,187
All other types	3	20,216	28.1	41.2	2,265	.....	1,997	22	872	5,394
Variety, 5-and-10, and to-a-dollar stores	280	10,949	.....	.....	1,595	199	1,389	111	801	3,083
Independents	175	1,643	15.0	14.7	128	199	104	21	648	318
Chains	105	9,306	85.0	85.3	1,467	.....	1,285	90	815	2,765
Men's and boy's clothing and furnishing stores	422	9,805	.....	.....	849	434	1,095	63	1,216	2,785

State of Minnesota—Table 3, Continued

Type of Operation	Number of Stores	Net Sales (1933) (000 Omitted)	Percent of Total Sales 1933	Percent of Total Sales 1929	Full-time Employees	Number of Props.	Payroll (000 Omitted) Total Including Part-time	Payroll (000 Omitted) Part-Time Only	Average Annual Earnings Per Full-time Employee	Total Reported Expenses[1] (000 Omitted)
Independents	379	$8,260	84.3	78.9	678	433	$874	$51	$1,211	$2,191
Chains	41	1,525	15.5	20.0	170	.....	220	12	1,224	589
All other types	2	20	.2	1.1	1	1	1	.....	1,000	5
Family clothing stores	126	6,149	.....	.....	757	129	894	21	1,153	2,102
Independents	115	3,301	53.7	86.3	412	126	444	20	1,029	1,026
Chains	10	2,835	46.1	8.4	345	2	450	1	1,302	1,074
All other types	1	13	.2	5.3	.....	1	.....	.....	.....	2
Women's ready-to-wear specialty stores	329	12,851	.....	.....	1,770	309	1,934	131	1,019	4,640
Independents	287	9,909	77.1	74.0	1,443	306	1,611	84	1,058	3,716
Chains	39	2,817	21.9	18.9	318	2	312	43	846	887
All other types	3	125	1.0	7.1	9	1	11	4	778	37
Shoe stores	369	7,275	.....	.....	558	326	712	74	1,143	2,206
Independents	285	3,466	47.7	62.8	286	321	334	24	1,084	897
Chains	67	2,522	34.7	28.8	185	.....	278	38	1,297	827
All other types	17	1,287	17.6	8.4	87	5	100	12	1,000	338
Furniture stores	467	10,415	.....	.....	1,205	563	1,337	91	1,034	4,094
Independents	456	8,925	85.7	96.9	989	557	1,058	71	996	3,485
Chains	5	1,344	12.9	2.5	179	.....	224	.....	1,251	527
Direct selling (house-to-house) / All other types	6	146	1.4	.6	37	6	55	20	946	82
Household appliance stores	174	2,511	.....	.....	624	68	694	63	1,011	1,127

Independents	61	695	27.7	.....	69	66	83	15	986	174
Chains	18	394	15.7	.....	193	.....	171	7	850	240
Utility-operated store	80	922	36.7	.....	223	.....	286	39	1,108	422
All other types	15	500	19.9	.....	139	2	154	2	1,094	291
Radio stores	184	1,658	.....	.....	238	191	288	30	1,084	617
Independents	178	1,621	97.7	90.3	233	189	283	30	1,086	606
Chains	3	16	1.0	8.4	2	.....	2	.....	1,000	5
All other types	3	21	1.3	1.3	3	2	3	.....	1,000	6
Grocery stores	3,362	43,808	.....	.....	2,088	3,836	2,137	283	888	5,879
Independents	3,218	36,944	84.3	83.0	1,607	3,830	1,566	215	841	4,680
Chains	138	6,730	15.4	16.5	460	2	557	68	1,063	1,179
All other types	6	134	.3	.5	21	4	14	.....	667	20
Combination stores	1,775	47,738	.....	.....	3,407	2,060	3,839	317	1,034	8,145
Independents	1,662	40,048	83.9	84.7	2,922	2,051	3,024	239	933	6,540
Chains	111	7,647	16.0	15.0	484	4	813	78	1,519	1,591
All other types	2	43	.1	.3	1	5	2	.....	2,000	5

[fols. 1063–1117]

Restaurants and eating places	4,857	37,002	.....	.....	8,244	5,863	5,647	553	618	12,851
Independents	4,768	35,319	95.4	94.2	7,715	5,856	5,219	527	608	11,917
Chains	81	1,616	4.4	5.2	520	1	411	20	752	895
All other types	8	67	.2	.6	9	6	17	6	1,222	39
Cigar stores	279	3,365	.....	.....	274	283	265	20	894	675
Independents	266	3,179	94.5	92.0	246	283	244	20	911	625
Chains	13	186	5.5	8.0	28	.....	21	.....	750	50
Motor-vehicle dealers	924	44,666	.....	.....	4,514	1,110	4,540	161	970	9,579
Independents	915	42,680	95.5	.....	4,350	1,108	4,356	160	960	9,227
Chains	9	1,987	4.5	.....	164	2	184	1	1,116	352
Filling stations	4,230	44,024	.....	.....	3,493	3,537	4,420	323	1,173	8,425

State of Minnesota—Table 3, Continued

Type of Operation	Number of Stores	Net Sales (1933) (000 Omitted)	Percent of Total Sales 1933	Percent of Total Sales 1929	Full-time Employees	Number of Props.	Payroll (000 Omitted) Total Including Part-time	Payroll (000 Omitted) Part-Time Only	Average Annual Earnings Per Full-time Employee	Total Reported Expenses[1] (000 Omitted)
Independents	3,088	$27,256	61.9	50.0	1,609	3,515	$1,987	$223	$1,096	$4,095
Chains	1,132	16,328	37.1	38.6	1,843	22	2,373	99	1,234	4,246
All other types	10	440	1.0	11.4	41	.....	60	1	1,439	84
Drug stores	1,157	19,850	.....	.....	1,832	1,203	2,089	252	1,003	4,945
Independents	1,049	16,467	83.0	86.0	1,391	1,137	1,683	249	1,031	4,009
Chains	40	3,190	16.1	14.0	413	.....	391	2	942	881
Mail-order houses	68	193	.9	.....	28	66	15	1	500	55
Hardware stores[2]	1,526	20,121	.....	.....	1,485	1,851	1,615	154	984	3,982
Independents	1,516	19,882	98.8	.....	1,450	1,844	1,580	154	983	3,925
Chains	10	239	1.2	.....	35	7	35	.....	1,000	57
Jewelry stores	449	3,269	.....	.....	330	472	470	29	1,336	1,227
Independents	444	3,256	99.6	98.7	329	467	468	29	1,334	1,222
All other types	5	13	.4	1.3	1	5	2	.....	2,000	5
All other kinds of business	12,892	186,677	.....	.....	18,833	13,472	21,068	2,328	995	46,435

[1] Before including any compensation for services of proprietors.
[2] This classification includes hardware stores and hardware-farm implement dealers in 1933, but only hardware stores in 1929.

[fol. 1118] PLAINTIFF'S EXHIBIT "D"

Department of Commerce

Washington, August 23, 1935

I hereby certify that the annexed is a true copy of the original report "Census of American Business, 1933—Retail Distribution, Volume I," which is on file in the Bureau of the Census.

W. L. Austin, Director of the Census.
(Official title)

Office of the Secretary

I hereby certify that W. L. Austin, who signed the foregoing certificate, is now, and was at the time of signing, Director of the Census, and that full faith and credit should be given his certificate as such.

In witness whereof, I have hereunto subscribed my name, and caused the seal of the Department of Commerce to be affixed this 23rd day of August; one thousand nine hundred and thirty-five.

E. W. Libbey, Acting Assistant Secretary of Commerce.
[Seal.]

(Here follows 1 paster, side folios 1119-1172)

[fols. 1119–1172]

U. S. Department of Commerce—Daniel C. Roper, Secretary

Bureau of the Census—William L. Austin, Director

Census of American Business: 1933—A Civil Works Administration Project

Retail Distribution

Volume I

United States Summary: 1933 and Comparisons with 1929. May, 1935

Units, Sales, Employment, Payroll, Expense and Stocks

(Group totals may include classifications not listed to avoid disclosure of individual operations)

(Sales, expense, stocks and payroll expressed in thousands of dollars)

Classification (Principal kind of Business of Chain)	Number of Chains	Number of Units	Sales			Central-office Expense		Total Reported Store Operating Expense (including Payroll)	Stocks On Hand End of Year (at cost)	1929 Comparisons		
			In Stores	Direct Through Central Offices	Credit Sales In Stores	Total	Amount Prorated To Stores			Chains	Units	Sales 1929
Total, All Chains	5,546	152,308	$6,767,766	$215,583	$1,141,604	$374,877	$93,057	$1,851,855	$737,631	7,061	159,638	$10,740,385

[fols. 1173-1205]

Retail Distribution: 1933
Number of Stores and Sales, By Kinds of Business,
for States, By City-Size Groups
(Sales are expressed in thousands of dollars)

	Lumber and Bldg. Material (incl. hardware)	
	Stores	Sales
Minnesota	3,049	49,153
Places of 250,000 to 500,000	441	10,559
Places of 100,000 to 250,000	60	1,619
Places of 20,000 to 30,000	68	1,878
Places of 10,000 to 20,000	120	2,884
Places of 5,000 to 10,000	169	4,199
Places of 2,500 to 5,000	275	5,302
Remainder of State	1,916	22,712

Table 1c.—Computation of Operating Expense, by Kinds of Business

(Sales and total reported expense expressed in thousands of dollars)

United States

Kind of Business	Number of stores	Sales	Number of proprietors	Total reported expense	Operating expense per $100 of sales with value of proprietors' services computed		
					At average rate of full-time employees		With adjustment for small stores,[1] 1933
					1933	1929	
Total	1,526,119	$25,037,225	1,574,341	$6,501,060	32.17	24.83	29.39
Food group	473,916	6,793,010	493,112	1,319,241	27.22	19.50	23.76
Candy and confectionery stores	54,243	271,213	60,676	72,776	43.58	33.12	33.43
Dairy-products stores (including milk dealers)	18,092	498,536	19,486	183,303	42.55	37.35	39.69
Delicatessen stores	10,048	107,685	11,648	21,672	29.86	21.82	26.57
Fruit stores and vegetable markets	21,897	170,748	25,602	34,201	33.85	25.19	26.58
Grocery stores (without meats)	163,538	1,803,242	161,216	276,240	24.43	17.36	19.98
Combination stores (groceries and meats)	140,372	3,201,042	142,881	536,158	21.36	16.10	19.87
Meat markets (including sea foods)	38,344	491,866	42,155	103,488	30.75	19.81	27.46
Bakeries—caterers	19,380	188,131	21,211	73,652	49.87	36.16	44.99
Bottled beer and liquor stores	3,767	16,730	4,203	4,206	49.86	.....	33.42
Other food stores	4,235	43,817	4,034	13,545	39.97	31.21	34.83
Farmers' supplies and country general stores	107,483	1,560,781	125,538	204,049	19.88	13.62	17.49
Country general stores	85,839	1,097,437	103,014	133,467	19.56	13.59	16.96
Farmers'-supply stores	21,644	463,344	22,524	70,582	19.99	13.67	18.35
General merchandise group	49,712	3,891,272	43,665	1,177,918	31.32	26.81	30.96

Department stores	3,544	2,544,960	783	831,785	32.71	28.36	32.71
General merchandise and dry-goods stores	34,122	668,145	35,229	153,484	27.66	22.51	26.08
Variety, 5-and-10, and to-a-dollar stores	12,046	678,167	7,653	192,649	29.26	24.96	28.89
Apparel group	86,548	1,923,333	77,790	607,333	36.05	30.64	34.46
Men's and boys' stores	19,491	489,104	19,055	148,858	35.46	28.92	34.29
Family clothing stores	5,765	185,371	5,604	60,352	35.01	28.44	35.16
Women's ready-to-wear specialty stores	17,759	568,392	16,501	171,536	33.06	29.10	32.13
Furriers—fur shops	1,502	41,617	1,326	17,699	46.92	33.85	45.72
Millinery stores	9,559	78,660	7,682	32,909	50.82	42.76	45.58
Custom tailors	6,986	53,411	7,325	25,532	64.40	50.01	55.13
Accessories and other apparel stores	6,650	82,186	5,891	24,904	35.73	32.25	32.87
Shore stores	18,836	424,592	14,406	125,543	33.60	29.38	32.40
Automotive group	305,403	4,419,249	309,086	1,021,965	30.20	22.06	26.75
Motor-vehicle dealers (new and used)	30,646	2,127,720	33,823	420,212	21.40	17.77	21.20
Accessories, tire, and battery dealers	16,027	225,970	15,626	69,189	38.32	30.70	34.45
Filling stations	170,404	1,531,724	156,451	342,233	32.45	23.81	27.44
Motorcycle, bicycle, and supply dealers	1,560	9,786	1,694	2,951	46.99	33.44	37.20
Garages and repair shops	86,454	519,827	101,175	185,732	53.93	46.03	43.13
Other automotive	312	4,222	317	1,648	48.39	27.42	44.29
Furniture and household group	42,976	958,780	39,623	368,844	43.26	32.51	41.57
Furniture stores	17,418	553,503	18,825	207,409	41.63	31.14	40.70
Floor coverings, drapery, and upholstery stores	2,155	40,462	2,244	15,123	43.38	32.67	41.18
Household appliance stores	9,750	195,531	4,189	80,705	43.56	35.26	42.62
Other home furnishings and appliance stores	5,481	52,254	5,713	23,077	57.80	35.88	49.90
Radio stores	8,172	117,030	8,652	42,530	44.53	33.06	40.88
Lumber, building, and hardware group	76,098	1,342,705	72,054	383,070	34.66	24.97	32.69
Lumber and building-material dealers	21,015	603,416	13,286	173,858	31.45	21.78	30.99
Electrical shops (without radios)	3,257	35,357	3,270	14,033	50.40	40.21	45.43
Heating and plumbing shops	11,307	123,128	11,433	49,629	50.75	40.21	46.06
Paint and glass stores	7,717	92,318	7,298	20,917	41.53	36.38	37.51
Hardware stores	22,844	311,321	25,078	80,111	34.34	26.63	31.57
Hardware and farm-implement stores	9,958	177,165	11,689	35,522	26.75	17.54	25.10
Restaurant and eating group	200,335	1,429,938	231,968	576,719	31.25	40.04	44.91

Retail Distribution: 1933—Continued

United States

Kind of Business	Number of stores	Sales	Number of proprietors	Total reported expense	Operating expense per $100 of sales with value of proprietors' services computed		
					At average rate of full-time employees		With adjustment for small stores,[1] 1933
					1933	1929	
Restaurants, cafeterias, and lunch rooms	124,090	$1,089,134	145,231	$458,349	50.98	39.88	46.24
Lunch counters, refreshment stands	46,344	235,253	52,978	60,979	49.69	40.92	39.90
Drinking places	29,901	105,551	33,759	37,391	60.40	.....	43.33
Other retail stores	162,779	2,612,882	158,437	803,019	37.28	30.71	34.67
Cigar stores and cigar stands	20,175	189,756	20,326	43,682	32.42	31.40	27.60
Coal and wood yards—ice dealers	23,875	623,077	23,324	177,121	32.66	24.84	30.75
Drug stores	58,407	1,066,252	57,749	285,052	32.07	27.10	30.87
Florists	7,728	66,495	8,342	31,427	60.45	43.40	53.85
Jewelry stores	14,313	175,066	14,370	73,521	53.29	35.54	47.91
News dealers	6,629	58,071	5,749	15,768	33.87	27.09	30.35
Office and store supply and equipment dealers	3,854	111,905	2,480	44,890	43.03	34.25	42.10
Other classifications	27,798	322,260	26,097	131,558	50.40	36.39	45.17
Second-hand stores	20,869	105,275	23,068	38,902	56.59	43.05	43.24

[1] For stores with annual sales of less than $10,000 the proprietors compensation is based on average wage of full-time employees, reduced in the proportion than sales bear to $10,000: i. e., compensation of a proprietor of a $7,500 store is 75 percent of the average wage of a full-time employee in the same kind of business.

(Here follows 1 paster, side folios 1212-1255)

[fols. 1212-1255]

Retail Distribution: 1933

Table 3—United States

Eighteen Kinds of Business by Types of Operation

Census of American Business

102 Pages (page 3)

Type of Operation	Number of Stores	Net Sales (1933) (000 Omitted)	Percent of Total Sales 1933	Percent of Total Sales 1929	Full-time Employees	Number of Props.	Payroll (000 Omitted) Total Including Part-time	Payroll (000 Omitted) Part-Time Only	Average Annual Earnings Per Full-time Employee	Total Reported Expenses[1] (000 Omitted)
Total—all types	1,526,119	$25,037,225	100.0	100.0	2,793,325	1,574,341	$2,910,445	$245,998	$986	$6,501,060
Independents	1,349,337	17,826,562	71.2	77.5	1,908,401	1,544,394	1,987,950	181,518	947	4,529,250
Chains	141,603	6,312,769	25.2	20.0	685,207	3,870	795,505	56,335	1,079	1,710,754
Direct selling (house-to-house)	7,026	187,368	.7	.2	36,658	6,655	47,247	1,385	1,251	76,006
Mail-order houses (catalog only)	311	244,381	1.0	1.0	27,752	199	24,786	546	873	68,446
Commissaries or company stores	2,719	95,578	.4	.3	6,873	1,415	8,020	631	1,075	13,399
Utility-operated stores	4,127	76,079	.3	.3	10,889	123	16,211	2,865	1,226	30,274
All other types (leased depts., coops., etc.)	20,996	294,488	1.2	.7	27,545	17,685	30,726	2,718	1,017	72,331
Department stores	3,535	2,538,258	....	....	364,105	783	386,462	26,485	990	828,887
Independents	1,428	1,708,445	67.3	72.1	279,979	750	296,888	16,946	1,000	604,698
Chains	2,057	605,722	23.9	16.7	59,517	17	68,455	9,246	995	166,094
Mail-order houses (catalog only)	35	219,978	8.7	11.2	24,233	12	20,670	258	842	57,335
Commissaries or company stores	11	3,298	.1		284	1	352	28	1,141	579
All other types	4	815	....		92	3	97	7	978	181
Variety, 5-and-10, and 1-to-a-dollar stores	12,046	678,167	....	....	95,949	7,653	81,885	8,991	760	192,649
Independents	6,572	59,699	8.8	10.7	6,336	7,478	5,125	912	665	13,261
Chains	5,400	618,335	91.2	89.2	89,609	102	76,757	8,079	766	179,367
All other types	74	135	....	.1	4	73	3	....	750	21
Men's and boys' clothing and furnishings stores	19,491	489,164	....	....	41,853	19,055	57,858	3,840	1,291	148,858
Independents	17,599	374,205	76.5	77.9	31,607	18,799	42,817	2,973	1,261	108,516
Chains	1,693	107,553	22.0	21.2	9,543	96	14,115	814	1,394	38,043
Direct selling (house-to-house)	24	153	....		28	26	28	13	536	51
Mail-order houses (catalog only)	6	2,409	.5	.9	293	4	236	....	805	795
All other types	169	4,784	1.0		382	130	662	40	1,628	1,453
Family clothing stores (men's, women's and children's)	5,765	185,371	....	....	21,544	5,604	26,314	1,740	1,141	60,352
Independents	5,177	146,744	79.2	71.5	16,711	5,536	20,077	1,245	1,127	45,318
Chains	550	37,588	20.3	27.3	4,667	37	6,074	489	1,197	14,647
Direct selling (house-to-house)	20	214	.1	1.2	71	18	32	2	423	79
All other types	18	825	.4		95	13	131	4	1,337	308
Women's ready-to-wear specialty stores	17,768	575,094	....	....	67,149	16,501	72,389	5,541	996	174,434
Independents	15,773	428,482	74.5	74.3	51,634	16,274	56,044	4,514	998	129,420
Chains	1,726	134,255	23.4	22.7	14,309	145	14,965	833	988	41,094
Direct selling (house-to-house)	62	1,367	.2	3.0	148	11	168	2	1,122	432
All other types	207	10,990	1.9		1,058	71	1,212	192	964	3,488
Shoe stores	18,836	424,592	....	....	34,679	14,406	45,455	4,247	1,188	125,543
Independents	13,386	197,345	46.5	53.5	16,015	14,108	20,609	1,841	1,172	54,094
Chains	4,442	196,249	46.2	38.0	15,664	124	21,681	2,016	1,255	62,341
Direct selling (house-to-house)	7	602	.2	8.5	27	3	42	3	1,444	124
Mail-order houses (catalog only)	10	473	.1		27	8	25	....	926	153
All other types	991	29,923	7.0		2,946	163	3,098	387	920	8,831
Furniture stores	17,418	553,503	....	....	66,238	18,825	84,804	3,799	1,223	207,409
Independents	16,728	468,338	84.6	83.9	56,413	18,700	71,284	3,598	1,200	171,879
Chains	570	78,418	14.2	14.2	8,965	26	12,308	140	1,357	32,883
Direct selling (house-to-house)	32	859	.2	1.9	237	33	305	37	1,131	461
All other types	88	5,888	1.0		623	66	907	24	1,382	2,186
Household appliance stores	9,761	198,662	....	....	38,010	4,189	44,639	4,388	1,057	81,932
Independents	3,926	65,880	33.2	....	8,394	4,021	10,796	1,261	1,136	22,634
Chains	1,355	42,669	21.5	....	13,226	12	12,291	392	900	20,934
Direct selling (house-to-house)	290	12,742	6.4	....	4,894	75	4,875	19	992	6,843
Utility-operated stores	3,976	73,160	36.8	....	10,622	41	15,742	2,673	1,230	29,398
All other types	214	4,211	2.1	....	874	40	935	43	1,021	2,123
Radio stores	8,161	113,899	....	....	14,432	8,652	17,812	1,560	1,131	41,303
Independents	7,846	94,128	82.6	79.0	11,940	8,525	14,563	1,493	1,095	35,995
Chains	207	17,793	15.6	19.1	2,239	19	2,898	36	1,278	6,476
Direct selling (house-to-house)	20	300	.3	1.9	40	25	42	5	925	83
All other types	88	1,678	1.5		213	83	309	26	1,329	74

[fols. 1256–1283] Table A.—State of Minnesota—Comparison of 39 Principal Kinds of Business, 1933 and 1929

Stores, Sales, Employees, Pay Roll, and Stocks

(Sales, pay roll, and stocks expressed in thousands of dollars)

Kind of Business	Number of Stores		Sales				Percent of change
			Amount		Percent of total sales		
	1933	1929	1933	1929	1933	1929	
Total for State	33,879	30,725	$585,102	$1,051,930	100.0	100.0	−44
Food group	7,500	7,455	122,582	194,913	20.9	18.5	−37
Grocery stores (without meats)	3,362	3,576	43,808	76,998	7.5	7.3	
Combination stores (groceries and meats)	1,775	1,106	47,738	52,364	8.2	4.9	−37
Meat markets (including sea foods)	726	1,109	10,811	34,221	1.9	3.3	
Candy and confectionery stores	700	1,204	4,267	12,044	.7	1.2	−65
Dairy-products stores (including milk dealers)	313	63	6,509	11,006	1.1	1.0	−41
Bottled beer and liquor stores	14	..	121	..	.0	....	....
Other food stores	610	397	9,328	8,280	1.5	.8	+13
Restaurants and eating places	5,320	2,441	39,482	37,820	6.7	3.6	+4
Eating places	4,857	2,441	37,002	37,820	6.3	3.6	−2
Drinking places	463	..	2,480	..	.4	....	....
Farmers' supplies and country general stores	2,958	3,106	51,317	102,427	8.8	9.7	−50
Country general stores	2,223	2,413	39,025	81,264	6.7	7.7	−52
Farmers' supply stores	735	693	12,292	21,163	2.1	2.0	−42
General merchandise group	855	864	96,870	165,462	16.5	15.7	−41
Department stores (including mail order)	77	105	71,969	133,696	12.3	12.7	−46
General merchandise and dry-goods stores	498	469	13,952	16,778	2.4	1.5	−17
Variety stores (5-and-1-10 and to-a-dollar stores)	280	290	10,949	14,988	1.8	1.4	−27
Apparel group	1,753	2,168	41,432	80,278	7.1	7.6	−48
Men's and boys' stores	422	611	9,805	22,551	1.7	2.1	−57
Women's ready-to-wear specialty stores	329	240	12,851	21,649	2.2	2.1	−41
Family clothing stores	126	151	6,149	12,252	1.1	1.2	−50
Accessories and other apparel stores	507	689	5,352	11,425	.9	1.0	−53
Shoe stores	369	477	7,275	12,401	1.2	1.2	−41

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Table A.—State of Minnesota—Continued

Kind of Business	Number of Stores		Sales				
			Amount		Percent of total sales		Percent of change
	1933	1929	1933	1929	1933	1929	
Automotive group	8,006	5,853	$108,777	$214,068	18.6	20.3	−49
Motor-vehicle dealers	924	1,495	44,666	138,839	7.6	13.2	−68
Accessories, tire, and battery dealers	514	545	7,219	12,263	1.3	1.2	−41
Filling stations	4,230	2,273	44,024	46,721	7.5	4.4	−6
Garages and repair shops[1]	2,305	1,519	12,617	15,918	2.2	1.5	−21
Other automotive	33	21	251	327	....	.0	−23
Furniture and household group	918	1,201	16,744	45,906	2.9	4.4	−64
Furniture stores	467	631	11,415	28,052	2.0	2.7	−59
Household appliance stores	174	134	2,511	5,530	.4	.5	−55
Radio stores	184	333	1,658	9,301	.3	.9	−82
Other furniture and household	93	103	1,160	3,023	.2	.3	−62
Lumber, building, and hardware group	3,049	3,360	49,153	109,503	8.4	10.5	−55
Lumber dealers	991	1,142	23,264	49,017	4.0	4.7	−53
Hardware stores (including farm-implement dealers)	1,526	1,599	20,121	47,178	3.5	4.5	−57
Heating and plumbing stores	328	362	3,647	9,348	.6	.9	−61
Other building (paint, glass, electrical)	204	257	2,121	3,960	.3	.4	−46
Cigar stores and cigar stands	279	771	3,365	9,639	.6	.9	−65
Coal and wood yards—ice dealers	490	423	19,945	25,962	3.4	2.5	−23
Drug stores	1,157	1,079	19,850	28,028	3.4	2.7	−29
Jewelry stores	449	545	3,269	8,513	.6	.8	−62
News dealers	51	51	731	993	.1	.1	−26
Other retail stores	771	1,189	9,939	26,374	1.7	2.5	−62
Second-hand stores	323	219	1,646	2,044	.3	.2	−19

[1] This classification for 1929 includes 78 body, fender and paint shops, and 10 parking stations, parking garages and lots, which are not included in the 1933 total. The figures for those establishments are included in this census in the service division, a new feature of the Census of American Business. The body, fender and paint shops reported receipts of $1,051,000 in 1929, gave employment to 235 full time and 77 part time employees, and paid $384,000 in salaries and wages; the parking services reported receipts of $119,000 and paid $29,000 in salaries and wages to 19 full time and 2 part time employees.

[fols. 1284-1349] PLAINTIFF'S EXHIBIT "L"

UNITED STATES OF AMERICA

Federal Trade Commission

I, Otis B. Johnson, Secretary of the Federal Trade Commission, and official custodian of its records, do hereby certify that attached is a full, true, and complete copy of a report entitled "Chain Stores—Sales, Costs, and Profits of Retail Chains" made by the Federal Trade Commission in response to Senate Resolution No. 224 and transmitted to the President of the Senate by letter dated April 22, 1933.

In witness whereof, I have hereunto subscribed my name and caused the seal of the Federal Trade Commission to be affixed this 28th day of October, A. D., 1935, at Washington, D. C.

Otis B. Johnson, Secretary. [SEAL]

[fols. 1350–1378]

Table 28.—Average Sales per Store, by Kind and Size of Chain, All Years Combined

Kind of chain	Number of stores per chain								
	2 to 5	6 to 10	11 to 25	26 to 50	51 to 100	101 to 500	501 to 1,000	1,001 and over	Average
Upward:									
Var. ($1 limit)	$70,505	$69,260	$96,402	$91,348	$128,302	$216,092	$202,108	$161,208	$171,556
Drug	70,879	91,534	104,105	112,282	147,283	136,221	121,851	.....	117,809
Millinery	47,266	40,386	43,788	42,988	62,332	71,421	.....	.....	55,168
Dry goods	25,452	23,059	145,335	44,443	.....	.....	.....	.....	79,254
Mus. inst'm'ts	142,101	52,720	199,588	359,181	.....	.....	.....	.....	208,930
Gen'l mdse	97,820	72,825	169,696	.....	.....	.....	.....	.....	97,229
Downward:									
Grocery	77,703	61,701	51,058	42,208	50,443	45,198	40,480	48,487	45,387
Gro. & meat	145,264	164,616	67,103	64,198	45,281	47,941	56,712	55,472	55,742
Confectionery	109,699	222,830	136,773	158,460	80,636	32,083	.....	.....	117,923
W. r'dy-to-wear	161,476	435,234	190,006	110,480	90,197	141,690	.....	.....	191,463
W. shoes	126,769	86,416	156,482	75,609	55,007	41,211	.....	.....	97,821
M. & W. shoes	135,927	83,778	61,021	61,421	91,026	50,017	.....	.....	70,856
Dept. store	4,455,451	8,763,548	2,049,531	1,897,392	.....	484,688	251,585	.....	1,671,815
Var. ($5 limit)	42,967	41,364	52,331	42,098	27,461	.....	.....	.....	43,684
M. & W. r'dt-to-wear	196,211	134,418	82,740	60,730	68,022	.....	.....	.....	98,390
M. shoes	99,959	86,681	86,960	39,436	34,144	.....	.....	.....	56,036
Hardware	97,355	76,277	46,399	56,239	50,180	.....	.....	.....	73,391
M. r'dy-to-wear	180,005	185,742	108,742	103,532	.....	.....	.....	.....	163,210
M. furnishings	61,141	55,012	51,280	57,531	.....	.....	.....	.....	55,444
W. accessories	71,076	60,416	50,969	38,109	.....	.....	.....	.....	52,593
Hats & caps	50,284	.....	44,494	41,464	41,376	.....	.....	.....	42,386
Indeterminate:*									
D. G. & apparel	139,880	88,506	96,749	72,527	30,222	144,512	174,920	152,947	142,379
Tobacco	49,777	38,837	42,315	49,167	16,329	91,538	.....	66,761	66,485
Meat	68,077	64,309	64,462	90,918	106,553	24,833	.....	.....	74,567
Var. (unlimited)	22,913	49,322	43,269	43,203	.....	.....	.....	.....	41,951
Furniture	299,068	391,894	423,462	141,875	.....	.....	.....	.....	308,111
Average	292,671	309,995	123,376	93,791	70,170	96,178	74,687	63,692	87,476

* See note 7, p. 21.

[fols. 1379–1421] Table 12.—Average Net Operating Profit per Store, by Kind of Chain, for Specified Years.

Kind of chain	1913	1919	1922	1925	1927	1928	1929	1930	Average
Grocery	$1,904	$914	$1,545	$1,005	$923	$992	$1,010	$686	$956
Gro. & meat	1,205	1,879	1,545	1,198	1,477	1,627	1,727	1,606	1,568
Meat	.....	1,369	1,890	1,966	1,483	1,699	2,359	1,739	1,824
Confectionery	14,946	6,505	9,649	10,595	8,832	7,030	7,464	3,355	7,116
Drug	8,391	9,842	7,618	7,207	5,609	6,676	4,254	1,765	4,957
Tobacco	.....	1,472	3,229	3,226	2,376	1,381	193	407	1,785
Var. ($1 limit)	9,096	12,003	17,609	19,833	19,168	17,603	15,210	11,662	15,712
Var. ($5 limit)	.....	4,223	3,603	3,233	2,140	813	1,467	132	1,260
Var. (unlimited)	.....	654	2,158	1,081	1,284	1,972	1,575	−3,363	96
M. r'dy-to-wear	.....	27,409	6,866	7,193	7,340	4,687	3,535	−2,825	3,898
W. r'dy-to-wear	1,234	18,989	7,899	7,779	11,295	11,336	8,408	4,196	8,337
M. & W. r'dy-to-wear	8,062	26,938	8,992	10,508	9,253	9,786	9,729	3,871	8,700
M. furnishings	.....	4,360	1,688	2,192	765	629	252	−1,937	416
W. accessories	.....	4,417	3,104	1,722	2,374	1,591	1,684	98	1,411
Hats & caps	.....	2,291	269	1,108	929	183	−669	−2,512	−180
Millinery	.....	7,766	5,214	2,437	1,204	1,131	998	−304	1,302
M. shoes	.....	3,632	2,862	4,001	2,283	1,997	3,901	1,254	2,598
W. shoes	.....	4,704	824	5,121	4,843	4,333	3,783	1,130	3,376
M. & W. shoes	13,634	8,082	4,928	3,765	2,731	2,483	2,093	10	2,248
Dry goods	.....	.....	8,223	7,487	2,371	2,299	1,570	−4,395	915
D. G & apparel	8,354	14,523	11,480	10,943	10,133	9,645	8,343	4,195	8,442
Dept. store	189,275	432,717	295,689	402,187	194,790	99,615	56,393	23,531	74,360
Gen'l mdse	5,441	4,070	3,254	4,019	4,096	3,205	4,706	1,685	3,554
Furniture	13,613	50,694	35,185	40,727	44,568	43,176	42,051	4,636	35,321
Mus. inst'm'ts	5,801	21,265	16,804	11,056	1,791	2,810	−330	−17,107	3,295
Hardware	3,902	7,718	285	2,600	2,528	2,775	1,813	−159	2,376
Average	5,737	5,553	4,983	4,496	3,990	4,110	3,940	2,593	3,889

[fol. 1422] PLAINTIFF'S EXHIBIT "M"

UNITED STATES OF AMERICA

Federal Trade Commission

I, Otis B. Johnson, Secretary of the Federal Trade Commission, and official custodian of its records, do hereby certify that attached is a full, true, and complete copy of: Report of the Federal Trade Commission relative to Cooperative Grocery Chain Stores, transmitted to the President of the Senate July 13, 1931.

In witness whereof, I have hereunto subscribed my name and caused the seal of the Federal Trade Commission to be affixed this 14th day of January, A. D., 1936, at Washington, D. C.

Otis B. Johnson, Secretary. [SEAL]

[fols. 1423-1451] Chain Stores—Cooperative Grocery Chains

Letter from the Chairman of the Federal Trade Commission transmitting in Response to Senate Resolution No. 224, Seventieth Congress, Report of the Federal Trade Commission Relative to Cooperative Grocery Chains.

December 22, 1931.—Referred to the Committee on the Judiciary and Ordered to be Printed

[Fols. 1452-1454]

Table 2.—Year of organization reported by 226 cooperative grocery chains

Year of organization	Retailer	Wholesaler-retailer	Year of organization	Retailer	Wholesaler-retailer
Prior to 1890	2	...	1924	6	2
1890 to 1900	1	...	1925	11	4
1900 to 1910	8	...	1926	13	10
1910 to 1915	5	...	1927	13	24
1915 to 1920	12	1	1928	13	24
1920	2	1	1929	14	45
1921	4	...			
1922	5	2	Total	111	115
1923	2	2			

Table 3.—Number of specified types of cooperative grocery chains reporting, and total and average number of member stores reported, 1930

[fols. 1455–1456]

Functional type	Retailer			Wholesaler-retailer			Total reporting		
	Number of cooperatives	Number of retail stores	Average number of stores per cooperative	Number of cooperatives	Number of retail stores	Average number of stores per cooperative	Number of cooperatives	Number of retail stores	Average number of stores per cooperative
Advertising	16	838	52	1	41	41	17	879	52
Buying and advertising	42	1,452	35	5	476	95	47	1,928	41
Warehousing and buying	18	4,279	238	2	270	135	20	4,549	227
Warehousing, buying, and weekly newspaper advertising	44	5,959	135	30	2,568	86	74	8,527	115
Warehousing, buying, and miscellaneous advertising	24	5,052	211	11	891	81	35	5,943	170
Supervision, warehousing, buying, and weekly newspaper advertising	3	664	221	102	14,400	141	105	15,064	143
Supervision, warehousing, buying, and miscellaneous advertising	4	1,781	445	17	4,470	263	21	6,251	298
Total	151	20,025	133	168	23,116	138	319	43,141	135

[fol. 1457] Estimate of total number of retailers in cooperative grocery chains.—The questionnaires returned by 319 cooperative grocery chains accounted for a total membership of 43,141 retail grocery stores. If the organizations that were unable to return schedules (191) are eliminated from the total of 632 to which schedules were sent, there remains a total maximum number of 441 of which the commission had a record as being in operation as of January, 1930. On this basis usable returns (319) were received from slightly over 72 per cent of all cooperative grocery chain organizations of which the commission had a record.

On the basis of returns made, and excluding a proportionate number of the 122 companies that did not reply, it is estimated that there was at the beginning of 1930 a total of 395 cooperative grocery chains in the country with an estimated membership of 53,419 retail stores.

It is possible that this estimate of the commission is somewhat high since it may be reasonable to expect that a larger number of the cooperative chains making no reply include in a cumulative way a higher proportion of smaller companies with scanty records and more companies that are erroneously believed to be cooperative grocery chains.

This estimate of 53,419 cooperative grocery stores may be compared with 52,514 grocery and grocery with meat stores operated in 1929 by 693 centrally owned chains of 4 stores or over.

Estimate of total volume of sales of cooperative grocery chains in 1929.—Based upon the commission's estimate of 395 cooperative grocery chains, it is estimated that the total cooperative grocery chain sales volume for the year 1929 was between $600,000,000 and $700,000,000. This estimate is based upon the following two assumptions: First, that the retailer and wholesaler-retailer proportions in the 395 cooperatives were the same as in the 319 cooperatives from which reports were received; and second, that the average volume per retailer and per wholesaler-retailer cooperative was the same as in the case of the 61 retailer and 82 wholesaler-retailer cooperatives reporting sales.

* * * * * * *

[fol. 1458]

Table 4.—Distribution of 319 cooperative grocery chains and of their retail member stores, by size groups, 1930

Size group	Retailer				Wholesaler-retailer				Total			
	Cooperative chains		Retail member stores		Cooperative chains		Retail member stores		Cooperative chains		Retail member stores	
	Number	Per cent	Number	Per cent	Number	Per cent	Number	Per cent	Number	Per cent	Number	Per cent
1 to 25 stores	37	24.5	568	2.8	15	8.9	244	1.1	52	16.3	812	1.9
25 to 50 stores	38	25.2	1,316	6.6	33	19.6	1,205	5.2	71	22.3	2,521	5.8
50 to 100 stores	28	18.5	1,893	9.5	43	25.6	3,087	13.4	71	22.3	4,980	11.5
100 to 200 stores	20	13.2	2,800	14.0	44	26.2	5,952	25.7	64	20.1	8,752	20.3
200 to 500 stores	17	11.3	4,873	24.3	27	16.1	8,009	34.6	44	13.8	12,882	29.9
500 to 1,000 stores	9	6.0	5,725	28.6	5	3.0	3,508	15.2	14	4.4	9,233	21.4
Over 1,000 stores	2	1.3	2,850	14.2	1	1.0	1,111	4.8	3	1.0	3,961	9.2
Total	151	100.0	20,025	100.0	168	100.0	23,116	100.0	319	100.0	43,141	100.0

[fol. 1459]

Table 5.—Distribution by States of retail member stores of 319 cooperative grocery chains as classified by type of organization and function, 1930

States	Type of cooperative chain: Retailer					
	Advertising	Buying and advertising	Warehousing and buying	Warehousing, buying, and advertising	Supervision, warehousing, buying, and advertising	Total number of retail member stores in retailer cooperatives
Minnesota	12	19	6	96	680	813

[fol. 1460]

States	Type of cooperative chain: Wholesaler-retailer						
	Advertising	Buying and advertising	Warehousing and buying	Warehousing, buying, and advertising	Supervision, warehousing, buying, and advertising	Total number of retail member stores in wholesaler-retailer cooperatives	Total number of retail member stores
Minnesota	2	..	..	..	1,098	1,100	1,913

[fol. 1461] Section 7. The Independent Grocers' Alliance of America.

The organization commonly known as the I. G. A. (Independent Grocers' Alliance of America) was organized in [fol. 1462] August, 1926, by the William W. Thompson Co., Chicago, a firm of certified public accountants engaged in accounting work for wholesale grocers in the Middle West. A group of these wholesalers were united for the purpose of pooling their purchases. The group was later organized more formally and intricately for a complete buying, merchandising, and advertising service, each wholesaler to operate in a distinct territory and sell I. G. A. retail members under contrac to him.

In June, 1930, I. G. A. headquarters estimated that there were about 8,500 retail I. G. A. members operating in approximately 2,900 cities and towns in 33 States from Maine to Nebraska and from Minnesota to Louisiana. As of

October, 1930, 48 wholesalers, with their 39 branches or controlled houses, were operating under the I. G. A. plan. In this study schedule returns from 38 wholesale members account for a total of 4,182 I. G. A. retailers.

Three affiliated companies form the headquarters organization of the I. G. A. at Chicago, Ill.: The Independent Grocers' Alliance of America, an unincorporated association of which the retailers become members; Marketing Specialists (Inc.), the company which does the buying for the wholesalers; and the Independent Grocers' Alliance Distributing Co., which issues franchises to the wholesalers authorizing them to organize and operate an I. G. A. group within a certain well-defined territory.

The I. G. A. Wholesaler.—Upon receiving an application from a wholesaler to join the I. G. A. plan, it is stated that headquarters of the I. G. A. investigates the standing of the wholesaler and the territory in which he proposes to operate. If it is found that the wholesaler has the necessary financial backing and a sufficient volume of sales to insure reasonable success, three or four men are sent from headquarters to organize the territory and hold a mass meeting of retailers at which they exhibit a model I. G. A. store. If possible, the retailers are brought into the organization at this first meeting, but most of them want more time in which to consider the plan.

The cost to the wholesaler of reorganizing the territory of a wholesaler ranges from $3,500 to $10,000 depending on the size of the territory and the amount of work to be done.

The I. G. A. wholesalers meet about once a month in Chicago. Meetings usually last about three days, and during this time arrangements are made for collective buy- [fol. 1463] ing. It is estimated by an I. G. A. official that about 70 per cent of all merchandise bought by wholesale members is purchased through the headquarters office. In addition to the orders placed at the monthly meetings many orders are sent to headquarters by mail.

As of June, 1930, the organization reported between two and three hundred items under I. G. A. private brand labels and that I. G. A. brand products are sold only to members.

The wholesaler member furnishes his retailer members with lists of goods designated as "Highly competitive items" which, according to the contract, are sold to the

retailer at wholesaler's cost not including the wholesaler's cash discount, plus not to exceed 3 per cent. Total purchases of such items must not exceed 25 per cent of the retailer's total purchases from the wholesaler. This presumably is to insure that retailers will buy a large part of their requirements from the I. G. A. and not confine their purchases to these low-margin specials.

The wholesaler pays headquarters $10 per year for each retail member (a part of which is set aside for national advertising) and in addition $8.90 per month for each of his retail members for local advertising. Under the contract the buying and advisory sales services participated in by the wholesaler are paid for by him as a monthly fee based on his total annual volume of sales. The charge is $80 per month for the wholesaler who does an annual business up to $1,000,000 and varies with larger volumes of business.

The I. G. A. Retailer.—The I. G. A. Retailer contracts with the wholesaler sponsoring the local group to paint the interior and exterior of his store the blue and white colors adopted as standard for I. G. A. stores, to rearrange the interior of the store, to pay $3.50 per week for advertising and other services rendered, and to purchase not less than $500 worth of goods per month from the wholesaler. The contract covers a period of three years and may be renewed by the retailer for 3-year periods provided he has cooperated in carrying out the I. G. A. policies. The retailer must put a large I. G. A. sign across the front of his store and affix I. G. A. insignias to his windows. The latter are furnished by the central headquarters at a cost of $1.25 for two.

In reorganizing the retailer's store, according to an official of the organization, an opening sale is held to dispose of old stock, slow-moving and unprofitable items. If the wholesaler with whom the retailer is under contract has just become an I. G. A. member this reorganization work is done by I. G. A. headquarters; if the retailer is joining an established group, the wholesaler's representative supervises the work. The retailer pays for all the remodeling and repainting work.

[fol. 1464] Store arrangement.—The central I. G. A. headquarters furnishes plans on store and stock arrangement. Again, according to officials, particular attention is given to lighting, and all counters are removed except a short one for scales and wrapping counter. Shelving is cut down

to 6 feet in height. Near the store entrance is placed a rack for baskets for the convenience of the customers in serving themselves. The stock is so arranged that related items are placed close together. Bulk goods are weighed in advance and labeled during spare moments so that the customer can help herself to this line of goods as well as to the package items.

Advertising.—All advertising matter is furnished by headquarters, which has its own copy writers, printing plant, etc. Newspaper advertising, window posters, and window-display layouts, which include a large pasteboard center background, are furnished each week. Every other week each retailer is furnished with 250 copies of Store News, a small 4-page publication containing a list of specials to be found at I. G. A. stores, new recipes, menus for the week, and other items of interest to the housewife. Every six or eight weeks there is a big national drive in which all I. G. A. stores feature the same items as specials. Additional copies of Store News may be obtained at a minimum cost. It is recommended that each retailer prepare a list of prospective customers and mail each issue of Store News to them. The Independent Grocergram, the official I. G. A. publication, containing news of new stores, results of big sales, information as to plans for the future, and sales helps, is issued once a month. A prize of $10 is offered for each original idea for increasing sales or advertising the organization. National magazine advertising and radio are the latest means of advertising to be adopted by the I. G. A.

Supervision.—An officer of the company stated that when a wholesaler organizes as an I. G. A. unit, his salesmen are trained to become supervisors under the I. G. A. plan. The aim of the I. G. A. organization is to have one supervisor for each 30 stores. Supervisors must be able to criticize tactfully the retailer's store and maintain high standards of appearance and arrangement. Each supervisor is given a manual containing a list of points which he is to check regularly in each retailer's store.

The I. G. A. central office has developed a budget system to govern the expenses of wholesale operations. Once a month wholesalers are expected to send a report to headquarters, which is compared with the budget, and if the actual expenses do not correspond with the estimate an investigation is made by headquarters to determine the cause. Close supervision is made of packing, shipping,

warehouse, and delivery operations. Another service consists in the rearrangement of salesmen's routes with a view to obtaining greater efficiency. This includes the dropping of unprofitable accounts.

Headquarters has developed a simple and inexpensive bookkeeping system for the retailer and there is also available to the retailer a credit and collection system at a small charge.

[fol. 1465] Section 8. The Red and White Corporation.

The Red and White cooperative grocery chain, with headquarters at Buffalo, N. Y., has been in operation for some 10 years, and is considered a pioneer among national cooperative grocery chains. The keynote of the plan is the close cooperation between the independent retailer, the wholesaler, and the manufacturer of grocery products in the distribution of private label merchandise.

The Red and White Corporation controls an extensive line of private brands, which include three grades—Red and White, Blue and White, and Green and White.

The headquarters office operates on a brokerage basis as the selling agent for the manufacturers who put up the private label goods. Commissions, which are paid by the manufacturers, vary on different kinds of merchandise, but average about 2½ per cent. The company sells the merchandise to wholesale grocers with whom it has contracts, giving to wholesalers exclusive control of the merchandise in the territory in which they operate. These wholesale grocers have affiliated with them a number of independent retailers who operate their stores under the name "Red and White Chain Stores" or "Red and White Stores."

The S. M. Flickinger Co., of Buffalo, started the Red and White plan after acquiring the private label business of the Serve-us Grocery Products Corporation. The old Serve-us brand has, however, been discontinued. About that time competition from regular chain stores was coming to be keenly felt in Buffalo and wholesalers and retailers felt that something must be done to meet it. S. M. Flickinger experimented with and developed the plan, until its membership grew to such proportions that in 1927 the present corporation was organized to handle its affairs.

In August, 1929, the Red and White Corporation estimated that there were 65 to 70 wholesalers (including branches) affiliated with the organization and over 6,000

Red and White retail stores in the United States and Canada. About 1,000 of these stores were in Canada. A later estimate, in September, 1930, placed the number of wholesalers at 26 [38] (exclusive of some 71 branches), and the number of retailers at over 7,500. Schedule returns in this study [fol. 1466] were received from 17 Red and White wholesalers accounting for a retail membership of 2,495.

The aim of the Red and White Corporation is to secure as complete a line of private brand merchandise as possible and to obtain cooperation from Red and White wholesalers and retailers in converting the largest possible percentage of their sales to the private label merchandise. The corporation reports having over 600 items in the private label line and claims the most complete line of private brand goods in the world. The present number constitutes a very high percentage of the packaged items in an average retailer's store.

The Red and White Corporation licenses manufacturers to manufacture, pack and ship grocery products bearing the company's labels to jobbers authorized to handle such goods. The company likewise authorizes the jobbers to sell the private label goods to retail grocers in designated territories. The jobbers are also licensed to install and operate the retail Red and White chain store system in these territories.

The Red and White plan is based on the theory that costs of distribution must be reduced to enable independent wholesalers and retailers to compete successfully with regular chain stores, and it is claimed that under this plan sales costs have been reduced. The manufacturer employs no salesmen and the wholesaler employs no salesmen in selling to Red annd White retailers. The elimination of salesmen is designed to enable independent distributors to operate with no more steps than are necessary in regular chain-store distribution systems. The Red and White retailer orders his merchandise by mail or telephone and is thus enabled to devote all his time to the problems of merchandising.

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[38] The following wholesale grocers with their branches constituted the membership of the Red and White cooperative chain in the United States and Canada as of September, 1930: Slocum Bergren Co., Minneapolis, Minn.; Stone-Ordean-Hells Co. (8 branches), Duluth, Minn.

The Red and White wholesaler.—The Red and White wholesaler or supply house, as it is called, is under contract to buy through the headquarters office a fixed amount of the private label merchandise each year for four years after which time the contract automatically renews itself, provided the total amount of the wholesaler's purchases has been satisfactory.

Red and White wholesalers may buy manufactured food products and certain canned goods items to be put up under the group's private labels from any manufacturer or packer whenever a saving can be effected, provided the quality of such merchandise is approved by the corporation as being of the quality required to maintain the standard of its private label goods.

The wholesaler agrees to sell to the retailer all merchandise carried in stock, or which he can obtain at special prices from which the cost of selling has been eliminated. The chief qualification of a wholesaler for membership in the Red and White organization is his ability to transact his wholesale business on a low-profit margin.

The only financial connection between Red and White headquarters and wholesale members is that each wholesaler is required to take 15 shares of stock in the headquarters company at $100 per share to finance his part of the labels. The Flickinger holdings may equal 20 per cent of the outstanding stock of the company. Stock ownership is the basis of voting power at semiannual conventions.

The Red and White retailer.—Under the Red and White plan the contract between the wholesaler and retailer requires that the retailer purchase 100 per cent of his [fols. 1467-1641] requirements of dry groceries from the private brand items and other stock carried by the jobber. This feature gives the group the reputation of being closely or tightly controlled. It is reported that this requirement has been remarkably effective as a result of the good will and voluntary cooperation shown by all parties. It is this feature of the contract that enables the wholesaler to dispense with salesmen, since the stores are obligated to buy exclusively from the sponsoring wholesaler. The requirement does not mean that a retailer must take all kinds and sizes of Red and White private brand goods, but only what the demand of his locality permits.

The retailer's store, according to officials of the company, is closely supervised in set-up, display, and merchandising

matters by the wholesaler who suggests plans and lay-outs for shelving and fixtures, according to the best standards, and advises regarding the best merchandising methods. The wholesaler is in turn guided by headquarters in these matters.

The retailer must agree to paint the front of his store in the standard Red and White colors and to keep his store in proper condition, subject to inspection by the wholesaler, and to bear all expenses incident to changes suggested. A sign is loaned by the wholesaler to the retailer, the latter depositing $35 with the company as security for the return of the sign on demand. The retailer also agrees to support and pay for the advertising program in newspapers or otherwise sponsored by the wholesaler. The retailer makes no cash investment and pays for no services except the advertising. The term of the retailer's contract is for two years. The Red and White plan favors cash-and-carry stores, but permits service operations wherever necessary.

An advisory commmittee consisting of an officer of the wholesaler company and five members elected by the retailers formulate plans for the improvement of trade relations and passes on new members.

An advisory council of retailers, composed of one retailer from each group, meets twice a year. It was started by the retailers, is maintained by them, and used for their advancement. This council gives the retailers a voice in the business and has proved a valuable institution, according to Red and White officials.

Advertising.—The Red and White Corporation does some advertising from headquarters which is entirely institutional. The various wholesale units formulate their own programs of price advertising through newspaper ads, window posters, and circulars, etc. The company discourages the use of "leaders" as advertised by chains, and states that it is not a policy of the company to match competitor's "leaders" sold at cost or below.

National advertising was started in 1930 as a result of the action of the advisory council. The retailers asked for it and a plan to provide for it was worked out. The retail members finance this advertising at a small charge per month per store.

The only dues or fees collected of wholesalers or retailers by headquarters are for the advertising in this national advertising venture.

There is now a manufacturers' association, known as the Red and White Manufacturers Association, composed of the manufacturers of Red and White label goods who have banded together on lines similar to the retailers' council.

* * * * * * *

[fols. 1642-1713] PLAINTIFF'S EXHIBIT "N"

Department of Commerce

Washington, September 4, 1935.

I hereby certify that the annexed is a true copy of the original report entitled, "Fifteenth Census of the United States, Census of Distribution, Retail Chains" (1929), which is on file in the Bureau of the Census.

W. L. Austin, Director of the Census.

Office of the Secretary

I hereby certify that W. L. Austin, who signed the foregoing certificate, is now, and was at the time of signing, Director of the Census and that full faith and credit should be given his certificate as such.

In witness whereof, I have hereunto subscribed my name, and caused the seal of the Department of Commerce to be affixed this 4th day of September, one thousand nine hundred and thirty-five.

E. W. Libbey, Acting Assistant Secretary of Commerce.
[SEAL]

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[fol. 1714–1725]

Table 3.—Operating Expenses—Variety-Store Chains

	Total, all chains	Expenses of Stores in Chains of— More than 100 units	51 to 100 units	26 to 50 units	11 to 25 units	6 to 10 units	Less than 6 units
Net sales (1929)	$809,758,118	$680,861,626	$62,314,685	$20,386,383	$21,846,012	$15,610,201	$8,739,211
Number of chains	148	8	7	9	21	44	59
Units operated by local chains	772	.....	.....	81	202	240	249
Units operated by sectional chains	735	155	180	180	120	88	12
Units operated by national chains	3,940	3,551	303	86	.....	.....	.....
Operating expenses	$203,688,665	$168,994,054	$17,259,126	$6,191,528	$5,756,128	$3,463,425	$2,024,404
Per $100 of sales	25.15	24.82	27.70	30.37	26.35	22.19	23.16

[fols. 1726–1742]

Table 4.—Operating Expenses—Motor-Vehicle Dealer Chains

	Total all chains	Expenses of Stores in Chains of— More than 25 units	11 to 25 units	6 to 10 units	Less than 6 units
Net sales (1929)	$616,594,816	$176,220,822	$125,427,913	$116,414,370	$198,531,711
Number of chains	167	8	12	38	109
Units operated by local chains	737	26	50	233	428
Units operated by sectional chains	216	100	54	33	29
Units operated by national chains	337	236	83	10	8
Operating expenses, total	$118,967,371	$32,999,143	$25,859,273	$22,499,228	$37,609,727
Per $100 of sales	19.29	18.73	20.62	19.33	18.94

[fols. 1743–1755]

Table 11.—Operating Expenses—Tire Chains

	Total, all chains	Expenses of Stores in chains of— More than 25 units	11 to 25 units	6 to 10 units	Les than 6 units
Net sales (1929)	$58,381,233	$36,936,525	$8,169,440	$4,970,639	$8,304,629
Number of chains	67	7	12	14	34
Units operated by local chains	329	.....	119	85	125
Units operated by sectional chains	76	.....	39	19	18
Units operated by national chains	732	699	33	.....	.....
Operating expenses[1]	$17,913,585	$12,425,492	$2,213,466	$1,271,689	$2,002,938
Per $100 of sales	30.68	33.64	27.09	25.58	24.12

[1] This computation of expenses includes no return on capital invested in merchandise, fixtures, or accounts. Expenses do not include of course, the cost of merchandise sold nor profit.

Table 4.—Operating Expenses[1]

(Retail expenses only)

	All chains (864 chains)		Chains with more than 500 units (14 chains)	Chains with 101 to 500 units (25 chains)
	Total	Per cent of sales		
Total net sales (1929)	$629,024,296	.....	$308,696,666	$108,399,929
Reported expenses—Total	149,498,301	23.77	67,921,787	33,062,616
Total wage cost	81,239,385	12.92	41,501,058	15,200,061
Salaries and wages paid 60,761 full-time employees	79,630,419	12.66	40,754,041	14,943,260
Salaries and wages paid 4,189 part-time employees	1,608,966	.26	747,017	256,801
Other operating expenses, including rent[2]	68,258,916	10.85	26,420,679	17,862,555
Expenses, per cent to sales	23.77	.....	22.00	30.50

	Chains with 51 to 100 units (18 chains)	Chains with 26 to 50 units (36 chains)	Chains with 11 to 25 units (132 chains)	Chains with 6 to 10 units (264 chains)	Chains with less than 6 units (375 chains)
Total net sales (1929)	$33,650,208	$29,240,717	$49,768,054	$52,312,715	$46,956,007
Reported expenses—Total	8,521,797	7,186,221	10,612,923	11,997,806	10,195,201
Total wage cost	4,153,665	3,438,920	5,432,741	6,338,606	5,174,334
Salaries and wages paid 60,761 full-time employees	4,073,209	3,372,482	5,305,230	6,160,462	5,021,735
Salaries and wages paid 4,189 part-time employees	80,456	66,438	127,511	178,144	152,599
Other operating expenses, including rent[2]	4,368,132	3,747,301	5,180,182	5,659,200	5,020,867
Expenses, per cent to sales	25.32	24.58	21.32	22.93	21.71

[1] This computation of expenses includes no return on capital invested in merchandise, fixtures, or accounts.

[2] Of the total number of stations 16,002 are in leased premises for which the annual rent aggregates $19,690,280 or 6.23 per cent of sales in such leased premises.

[fol. 1767] Table 5A.—Operating Expenses* Classified by Size of Chain—Men's Clothing Chains

	Totals, all chains	Chains of: More than 25 units	11 to 25 units	6 to 10 units	Less than 6 units
Net sales (1929)	$88,432,317	$34,253,676	$33,347,443	$9,710,735	$11,120,463
Number of chains	84	7	21	24	32
Units operated by local chains	243	.....	64	74	105
Units operated by sectional chains	429	112	195	94	28
Units operated by national chains	221	173	37	6	5
Operating expenses, total	$23,833,097	$7,729,755	$10,112,219	$2,826,450	$3,164,673
Per $100 of sales	26.95	22.57	30.32	29.11	28.46

Table 5B.—Operating Expenses* Classified by Size of Chain—Men's Clothing and Furnishings Chains

	Totals, all chains	Chains of: More than 10 units	6 to 10 units	Less than 6 units
Net sales (1929)	$110,571,557	$47,329,207	$31,000,929	$32,241,421
Number of chains	87	17	30	40
Units operated by local chains	376	94	130	152
Units operated by sectional chains	290	181	86	23
Units operated by national chains	35	31	.....	4
Operating expenses, total	$35,211,959	$15,700,508	$9,823,927	$9,687,524
Per $100 of sales	31.84	33.17	31.69	30.04

* The computation of expenses includes no return on capital invested in merchandise, fixtures, or accounts. Expenses do not include, of course, the cost of merchandise sold, nor profit.

[fol. 1768]

Table 5C.—Operating Expenses Classified by Size of Chain—Men's Furnishings Chains

	Totals, all chains	Chains of More than 25 units	11 to 25 units	6 to 10 units	Less than 6 units
Net sales (1929)	$23,588,439	$6,819,827	$7,693,587	$4,022,438	$5,052,587
Number of chains	49	3	9	11	26
Units operated by local chains	260	.....	106	60	94
Units operated by sectional chains	104	35	29	19	21
Units operated by national chains	116	93	23	.....	.....
Operating expenses, total	$7,420,394	$2,068,542	$2,489,453	$1,244,110	$1,618,289
Per $100 of sales	31.46	30.33	32.36	30.93	32.03

* The computation of expenses includes no return on capital invested in merchandise, fixtures, or accounts. Expenses do not include, of course, the cost of merchandise sold, nor profit.

[fols. 1769–1776]

Table 5E—Operating Expenses* Classified by Size of Chains—Tailoring Chains

	Totals, all chains	Chains of More than 10 units	Chains of 6 to 10 units	Chains of Less than 6 units
Net sales (1929)	$19,073,534	$11,670,626	$2,437,160	$4,965,748
Number of chains	29	7	7	15
Units operated by local chains	72	.....	22	50
Units operated by sectional chains	136	98	25	13
Units operated by national chains	80	64	10	6
Operating expenses, total	$4,995,964	$2,511,450	$633,128	$1,851,386
Per $100 of sales	26.19	21.52	25.98	37.28

(Here follows 1 table, side folios 1777-1792)

[fol. 1777–1792]

Stores' Operating Expenses

	Totals, All Chains		Chains with 50 and more units (4 chains)	Chains with 26 to 50 units (5 chains)	Chains with 11 to 25 units (28 chains)	Chains with 6 to 10 units (69 chains)	Chains with less than 6 units (96 chains)	Leased-department chains (17 chains)
	Amount (219 chains)	Per cent to sales						
Net Sales	$282,477,843	100.00	$42,675,862	$11,188,395	$80,365,209	$76,419,128	$50,584,057	$21,245,192
Expenses								
Total wage cost (total of employees and proprietors, 34,002)	35,528,628	12.57	3,536,087	1,162,562	10,464,251	9,950,455	7,603,210	2,812,063
Salaries and wages paid full-time employees (total full-time employees, 28,810)	33,857,613	11.98	3,329,615	1,043,742	9,899,479	9,526,567	7,298,789	2,759,421
Salaries and wages paid part-time employees (total part-time employees, 5,126)	1,593,465	.56	201,772	118,820	556,547	409,788	257,421	49,117
Services of proprietors (computed at same rate as that paid average employee) (total proprietors, 66)	77,550	.03	4,700	.....	8,225	14,100	47,000	3,525
Total rental cost	18,918,849	6.70	3,881,348	958,984	5,288,603	4,019,059	2,812,032	1,958,823
Rent paid for 2,083 leased premises (6.70 per cent of the sales in such leased premises)	18,887,140	6.69	3,881,348	958,984	5,288,603	4,019,059	2,780,323	1,958,823
Rental value of 9 owned and partly owned premises (at same per cent to sales as that paid for leased premises)	31,709	.01	.....	.....	.....	.....	31,709	.....
All other expense	29,940,543	10.60	3,202,316	583,422	10,668,561	7,837,664	5,230,982	2,417,598
Total of above expenses	84,388,020	.....	10,619,751	2,704,968	26,421,415	21,807,178	15,646,224	7,188,484
Per cent to sales	.....	29.87	24.88	24.18	32.87	28.54	30.93	33.84

[fols. 1793–1859]

Table 6.—Operating Expenses by Size of City—Shoe Chains

[Includes only chains which operate all their units in cities of the same size-class]

			Chains operating all their units in cities and places of—			
	Total, all chains	Chains used in this table	More than 100,000 population	25,000 to 1000,000 population	Less than 25,000 population	Large national chains operating in all sizes of cities
Number of chains	320	156	113	6	20	17
Number of units	6,099	3,896	1,097	26	116	2,657
Net sales (1929)	$369,149,760	$255,880,122	$112,999,754	$1,881,640	$4,123,201	$136,875,527
Total operating expenses	$113,700,090	$81,496,819	$35,686,916	$579,435	$944,010	$44,286,458
Per $100 of sales	30.80	31.85	31.58	30.79	22.89	32.35

42—500

[fols. 1860–1875]

Table 6.—Operating Expenses—Drug Store Chains

A. All Drug Store Chains

		Stores in Chains of—					
	Total, all chains	More than 100 units	50 to 100units	26 to 50 units	11 to 25 units	6 to 10 units	Less than 6 units
Net sales (1929)	$312,301,721	$163,718,058	$13,219,025	$38,353,057	$35,960,854	$27,381,416	$33,669,311
Number of chains	249	4	3	13	31	62	136
Units operated by local chains	1,953	.....	130	420	385	450	568
Units operated by sectional chains	478	261	62	60	74	8	13
Units operated by national chains	1,082	1,082	.....	.....	.....	.....	.....
Operating expenses	$86,337,513	$46,672,861	$3,363,771	$10,024,506	$9,840,259	$7,508,275	$8,927,841
Per $100 of sales	27.64	28.51	25.45	26.14	27.36	27.42	26.52

645

[fols. 1876-1882]

Table 3.—Operating Expenses—Continued

B.—Other Jewelry Chains

	All chains	More than 6 units (10 chains)	Less than 6 units (14 chains)
Net sales (1929)	$6,552,241	$4,197,807	$2,354,434
Number of chains	24	10	14
Units operated by local chains	89	42	47
Units operated by section and national chains	66	48	18
Operating expenses	$2,650,716	$1,716,003	$934,713
Per $100 of sales	40.46	40.88	39.70

[fols. 1883-1887]

Table 4.—Operating Expenses—Hardware Chains

	All (71) chains	More than 10 units (6 chains)	6 to 10 units (23 chains)	Less than 6 units (42 chains)
Net sales (1929)	$27,784,786	$3,366,885	$12,095,603	$12,322,298
Number of chains	71	6	23	42
Number of units	437	93	168	176
Operating expenses[1]	$7,478,420	$1,073,912	$3,185,060	$3,219,448
Per $100 of sales	26.92	31.90	26.33	26.13

[fols. 1888-1896]

Table 17.—Operating Expenses—Paint and Wall-Paper Chains

	All (55) chains	More than 26 units (3 chains)	11 to 25 units (15 chains)	6 to 10 units (17 chains)	Less than 6 units (20 chains)
Net sales (1929)	$25,365,336	$7,539,655	$8,346,894	$4,643,377	$4,835,410
Number of chains	55	3	15	17	20
Number of units	565	123	233	122	87
Operating expenses	$7,875,118	$2,070,279	$3,001,599	$1,280,398	$1,522,842
Per $100 of sales	31.05	27.46	35.96	27.57	31.49

[fols. 1897–1902]

Table 4.—Operating Expenses—Office Appliance Chains

Items	Total all chains	Chains of— More than 50 units	26 to 50 units	11 to 25 units	6 to 10 units	Less than 6 units
Net sales (1929)	$164,535,060	$114,286,784	$17,537,312	$23,867,821	$3,287,200	$5,555,943
Number of chains	45	9	5	11	8	12
Units operated by local chains	33	.....	.....	15	.....	18
Units operated by sectional chains	96	.....	.....	30	40	26
Units operated by national chains	1,510	1,147	177	158	20	8
Operating expenses, total	$64,063,875	$47,029,331	$6,536,247	$7,968,680	$970,204	$1,559,413
Per $100 of sales	38.94	41.15	37.27	33.39	29.51	28.07

[fol. 1903] PLAINTIFF'S EXHIBIT "O"

By
Gerwig & Gerwig
Chicago, Illinois

[fol. 1904]

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Companies	Number of Stores at Year-End	1932 Sales	1932 Net Profits	Ratio—Net Profits to Sales	1932 Year-End Inventories	1932 Sales times Inventories
Penney	1,473	$155,272,000	$5,082,700	3.27%	$27,314,900	5.7
Macy (f)	2	109,531,100	3,827,800	3.49	10,429,200	10.5
Federated	18	84,951,200	1,763,300	2.08	7,883,200	10.8
May (j)	6	72,521,500h	880,600	1.21	10,652,400	6.8
Gimbel Bros	7	72,196,500	4,459,100d	6.18d	8,970,600	8.0
Hahn	27	70,865,200h	3,747,300d	5.29d	8,918,500	7.9
City Stores	6	29,516,600h	1,934,800d	6.55d	3,856,700	7.7
Interstate (k)	35	21,959,600h	515,500d	2.35d	2,859,600	7.7
Emporium Capwell	2	20,059,100h	294,700d	1.47d	2,702,500	7.4
Goldblatt	6	20,033,700h	533,300	2.66	1,949,900	10.3
Bullock's, Inc	2	18,414,100	73,200	0.40	2,742,500	6.7
Wieboldt Stores	5	17,352,400h	344,200d	1.98d	2,071,800	8.4
The Fair, Chicago	3	15,922,300	667,900d	4.19d	2,562,300	6.2
Broadway D. S., Los Angeles	2	15,203,600	84,900d	0.56d	2,660,100	5.7
Hale Bros. Stores	5	14,205,000h	58,200	0.41	2,338,100	6.1
Burdine's, Inc	4	3,138,900	26,700	0.85	292,700	10.7
Consol. Dry Goods	5	3,022,800	177,300d	5.87d	1,008,400	3.0
Lincoln Stores	8	2,759,900	77,900	2.82	209,400	13.2
Totals—18 Cos.	1,616	746,925,500	98,000	0.01	99,422,800	7.5
Marshall Field (n)	21	78,267,800	7,987,200d	10.20d	17,520,500	4.5
Totals—19 Cos	1,637	$825,193,300	$7,889,200d	0.96%d	$116,943,300	7.1

d–Deficit.

f–Combined figures of Macy and Bamberger. While sales do not include figures of The Lasalle & Koch Co., Toledo, and Davison-Paxon Company, Atlanta, net profits are after absorbing $252,208 share of net loss of these affiliated stores.

h–Including sales of leased departments.

j–Net Profits were after deducting $67,788 net debit adjustments on securities owned, officially charged to surplus. However, operations for the year were relieved of charges aggregating $902,508 in respect of depreciation and amortization of furniture, fixtures, equipment and deferred charges written off as of Feb. 1, 1932. That is, if $902,508 had been charged against operations a deficit of $21,900 would have resulted —amounting to a loss of 0.03% on sales.

k–Deficit does not include $79,890 debit adjustments applicable to prior years, officially charged against operations.

n–Including figures of manufacturing and wholesale divisions, as well as the retail stores.

Number of Stores is generally at January 31, 1933, or at the end of each company's fiscal year.

Sales and Net Profits are for the fiscal years ended about January 31, 1933, except as follows:—Burdine's, for the year ended July 31, 1932; Broadway, year ended October 31, 1932; Penney, Hale, Goldblatt, Consolidated and Marshall Field, year ended December 31, 1932.

Net Profits are after deducting all ordinary charges, generally including depreciation, interest and income taxes, but are before deducting any dividends paid.

Sales, Net Profits & Inventories of Department Store Chains

1933

Companies	Number of Stores at Year-End	1933 Sales	1933 Net Profits	Ratio—Net Profits to Sales	1933 Year-End Inventories	1933 Sales times Inventories
Penney	1,466	$178,774,000	$14,235,600	7.96%	$45,233,500	4.0
Macy (f)	4	112,671,800	3,540,800	3.14	14,104,600	8.0
Federated	18	82,551,200	2,775,300	3.36	9,699,900	8.5
May (j)	6	76,470,000h	2,905,400	3.80	13,621,800	5.6
Gimbel Bros	7	72,878,400	626,500d	0.86d	12,211,700	6.0
Hahn	27	70,828,100h	24,700	0.03	10,738,300	6.6
City Stores	6	29,524,600h	678,400d	2.30d	4,944,600	6.0
Goldblatt	7	22,604,400h	1,270,800	5.62	3,870,800	5.8
Interstate	35	21,310,800h	184,700	0.87	2,481,100	8.6
Emporium Capwell	2	18,752,900h	401,300	2.14	2,944,100	6.4
Bullock's, Inc	2	17,573,000	632,800	3.60	3,089,200	5.7
Wieboldt Stores	5	17,893,800h	501,100	2.80	2,494,200	7.2
The Fair, Chicago	3	16,574,100	250,600	1.51	3,057,000	5.4
Broadway D. S., Los Angeles	2	13,480,900	84,200	0.62	2,970,100	4.5
Hale Bros. Stores	5	13,196,800h	193,700	1.47	2,434,900	5.4
Lincoln Stores	10	3,020,600	144,900	4.80	325,000	9.3
Consol. Dry Goods	5	2,834,100	23,900d	0.84d	1,086,500	2.6
Burdine's, Inc	4	2,736,300	19,500	0.71	304,800	9.0
Totals—18 Cos	1,614	773,675,800	25,836,600	3.34	135,603,100	5.7
Marshall Field (m)	21	88,458,000	97,600	0.11	24,566,800	3.6
Associated	8	43,376,000	260,100	0.60	4,915,900	8.8
Totals—27 Cos	1,643	$905,509,800	$26,194,300	2.89%	$165,085,800	5.5

d–Deficit.

f–Combined figures of Macy, Bamberger, Lasalle & Koch, and Davison-Paxon.

h–Including sales of leased departments.

j–Operations for the year were relieved of net charges aggregating $517,993 in respect of depreciation and amortization of furniture, fixtures, equipment, leases and deferred charges written off as of Feb. 1, 1932.

m–Including figures of manufacturing and wholesale divisions, as well as the retail stores.

Number of Stores is generally at January 31, 1934, or at the end of each company's fiscal year.

Sales and Net Profits are for the fiscal years ended about January 31, 1934, except as follows:—Burdine's, for the year ended July 31, 1933; Broadway, year ended October 31, 1933; Penney, Hale, Goldblatt, Consolidated and Marshall Field, year ended December 31, 1933.

Net Profits are after deducting all ordinary charges, generally including depreciation, interest and income taxes, but are before deducting

Companies	Number of Stores at Year-End	1934 Sales	1934 Net Profits	Ratio—Net Profits to Sales	1934 Year-End Inventories	1934 Sales times Inventories
Penney	1,474	$212,053,400	$16,147,300	7.61%	$41,931,400	5.1
Macy (b)	4	118,211,100	3,580,700	3.03	14,169,500	8.3
Federated	18	89,123,500	2,308,400	2.59	9,369,000	9.5
May (f)	6	86,796,000	3,301,600	3.80	13,085,400	6.6
Hahn	32	82,075,700h	1,158,700	1.41	12,163,300	6.7
Gimbel Bros	7	77,155,300	347,600	0.45	12,237,800	6.3
City Stores	6	32,088,300h	394,100d	1.23d	4,693,500	6.8
Goldblatt	7	29,892,600h	1,072,700	3.59	4,114,800	7.3
Interstate	36	23,585,700h	473,900	2.01	2,588,400	9.1
Emporium Capwell	2	20,436,200h	416,400	2.04	2,994,200	6.8
Bullock's, Inc	2	20,422,700h	796,900	3.90	3,057,400	6.7
Wieboldt Stores	5	19,511,300h	404,800	2.07	2,354,600	8.3
The Fair, Chicago	3	17,770,000	252,400	1.42	2,875,400	6.2
Hale Bros. Stores	5	13,902,200h	186,900	1.34	2,716,200	5.1
Broadway D. S., Los Angeles	2	13,726,400h	5,000d	0.04d	2,459,500	5.6
Burdine's, Inc	4	3,940,500	180,500	4.58	335,500	11.7
Lincoln Stores	12	3,570,900	144,300	4.04	331,000	10.8
Consol. Dry Goods	5	3,114,500	40,400d	1.30d	898,800	3.5
Totals—18 Cos	1,630	867,376,300	30,333,600	3.50	132,375,700	6.6
Marshall Field (k)	17	100,795,100	166,300d	0.16d	25,549,700	3.9
Associated	8	46,347,000	1,036,700	2.24	5,219,100	8.9
Totals—20 Cos	1,655	$1,014,518,400	$31,204,100	3.08%	$163,144,500	6.2

b–Combined figures of Macy, Bamberger, Lasalle & Koch, and Davison-Paxon. Sales and Net Profits are for 53 weeks.

d–Deficit.

f–Net Profits were relieved of net charges aggregating $307,197 in respect of depreciation and amortization of furniture, fixtures, equipment, leases and deferred charges written off as of Feb. 1, 1932.

h–Including sales of leased departments.

k–Including figures of manufacturing and wholesale divisions, as well as the retail stores.

Number of Stores is generally at January 31, 1935, or at the end of each company's fiscal year.

Sales and Net Profits are for the fiscal years ended about January 31, 1935, except as follows:—Burdine's, for the year ended July 31, 1934; Broadway, year ended Oct. 31, 1934; Penney, Hale, Goldblatt, Consolidated and Marshall Field, year ended December 31, 1934.

Net Profits are after deducting all ordinary charges, generally including depreciation, interest and income taxes, but are before deducting any dividends paid.

[fol. 1908]

Sales, Net Profits & Inventories of Drug Store Chains

1932

Companies	Number of Stores at Year-End	1932 Sales	1932 Net Profits	Ratio-Net Profits to Sales	1932 Year-End Inventories	1932 Sales times Inventories
Walgreen (a)	471	$47,612,200	$1,663,200	3.49%	$6,083,200	7.8
Peoples	117	16,180,200	511,800	3.16	2,382,600	6.8
Katz	8	7,500,000e	429,200	5.72e	993,300	7.6e
Crown	80	5,467,800	25,400	0.46	974,500	5.6
Tamblyn (b)	59	3,770,400	135,400	3.59	658,800	5.7
Miller (Cleveland)	6	1,008,800	36,700d	3.64d	348,100	2.9
Totals—6 Cos	741	$81,539,400	$2,728,300	3.35%	$11,440,500	7.1

a–Net Profits were before absorbing $1,584,594 leasehold improvements written off, $917,072 markdown of equipment values at certain stores, $562,790 final settlement for goodwill of subsidiary, lease cancellations, etc.—net, and $100,000 markdown of investment in affiliated company, all officially charged to surplus.

b–In Canadian dollars.

d–Deficit.

e–Estimated.

Sales and Net Profits are for the calendar year 1932, (except Walgreen and Crown, for year ended Sept. 30, 1932); and include any wholesale activities in addition to retail store operations.

Net Profits are after deducting all ordinary charges, generally including depreciation, interest and income taxes, but are before deducting any dividends paid.

[fol. 1909]

Sales, Net Profits & Inventories of Drug Store Chains

Companies	Number of Stores at Year-End	1933 Sales	1933 Net Profits	Ratio-Net Profits to Sales	1933 Year-End Inventories	1933 Sales times Inventories
		1933				
Walgreen (a)	474	$46,026,100	$1,820,500	3.96%	$7,406,400	6.2
Peoples	113	15,477,100	643,600	4.16	2,502,500	6.2
Katz	8	7,585,600	475,000	6.26	1,363,100	5.6
Crown (b)	82	5,136,400	289,400d	5.63d	688,400f	7.5
Tamblyn (h)	59	3,274,000	112,100	3.42	673,200	4.9
Miller (Cleveland)	7	1,086,700	28,800d	2.65d	338,100	3.2
Totals—6 Cos	743	78,585,900	2,733,000	3.48	12,971,700	6.1
Economical-Cunningham	70e	5,402,800	202,900	3.76	1,055,100	5.1
Dow Drug	50	4,049,900	38,600	0.95	721,100	5.6
Totals—8 Cos	863	$88,038,600	$2,974,500	3.38%	$14,747,900	6.0

a–Net Profits were before absorbing $604,435 markdown adjustment of equipment values of certain stores, $524.534 lease cancellation payments and expenses and $76,123 markdown of investment in affiliated company, etc.
b–Sales and Net Profits represent 12/10 of figures for the 10 months ended July 31, 1933.
d–Deficit.
e–Estimated.
f–At July 31, 1933.
h–In Canadian dollars.

Sales and Net Profits are for the calendar year 1933, (except Walgreen and Economical-Cunningham, for year ended Sept. 30, 1933; and Crown as indicated in footnote –b–); and include any wholesale activities in addition to retail store operations.

Net Profits are after deducting all ordinary charges, generally including depreciation, interest and income taxes, but are before deducting any dividends paid.

[fol. 1910]

Sales, Net Profits & Inventories of Drug Store Chains

Companies	Number of Stores at Year-End	1934 Sales	1934 Net Profits	Ratio—Net Profits to Sales	1934 Year-End Inventories	1934 Sales times Inventories
		1934				
Walgreen	487	$53,654,700	$2,558,900	4.77%	$8,006,500	6.7
Peoples	117	16,879,400	1,194,900	7.08	2,757,700	6.1
Katz	9	8,838,400	525,900	5.95	1,777,400	5.0
Crown	116	7,558,500	157,600	2.09	1,337,200	5.7
Tamblyn (a)	60	3,317,400	100,300	3.02	692,000	4.8
Miller (Cleveland)	7	1,165,300	5,900d	0.51d	296,100	3.9
Totals—6 Cos	796	91,413,700	4,531,700	4.96	14,806,900	6.1
Economical-Cunningham	75e	6,228,500	333,800	5.36	1,026,900	6.1
Dow Drug	50	3,958,500	141,900	3.58	772,800	5.1
Totals—8 Cos	921	$101,600,700	$5,007,400	4.93%	$16,666,600	6.1

a—In Canadian dollars.
d—Deficit.
e—Estimated.

Sales and Net Profits are for the calendar year 1934 (except Walgreen, Crown and Economical-Cunningham, for year ended Sept. 30, 1934); and include any wholesale activities in addition to retail store operations.

Net Profits are after deducting all ordinary charges, generally including depreciation, interest and income taxes, but are before deducting any dividends paid.

1932

Companies	Number of Stores at Year-End	1932 Sales	1932 Net Profits	Ratio—Net Profits to Sales	1932 Year-End Inventories	1932 Sales times Inventories
Safeway Stores	3,370	$229,173,500	$4,390,200	1.92%	$18,406,500	12.5
Kroger	4,737	213,159,700	2,740,900	1.29	14,589,400	14.6
American Stores	2,977	115,453,500	4,313,800	3.74	10,165,500	11.4
1st National	2,705	100,892,900	4,220,100	4.18	8,637,700	11.7
National Tea	1,389	65,657,200	899,100	1.37	5,370,500	12.2
H. C. Bohack Co	733	32,065,000	671,200	2.09	2,145,900	14.9
Grand Union	685f	30,365,900	602,200	1.98	2,975,400	10.2
Reeves (N. Y. C.) (h)	747	26,801,800	899,100	3.35	1,926,200	13.9
Dominion Stores (j)	530e	23,042,300	361,600	1.57	2,326,800	9.9
Economy (Boston)	447	15,035,800	230,200	1.53	1,354,400	11.1
Loblaw Gro. Co. Ltd. (j)	107	14,219,100	987,900	6.95	1,437,300	9.9
Southern Grocery (k)	383	12,382,900	127,900	1.03	1,404,600	8.8
Pender (k)	403	11,546,200	5,000	0.04	1,059,400	10.9
U. S. Stores	520e	10,831,300	345,200d	3.19d	1,056,600	10.2
Winn & Lovett (h)	60	5,162,000	111,900	2.17	369,000	14.0
Thrift Stores Ltd. (j)	71	4,461,700	64,100	1.44	275,400	16.2
Oakley	82	2,724,500	32,800	1.20	344,100	7.9
Totals—17 Cos	19,946	912,975,300	20,313,100	2.22	73,844,700	12.4
A. & P. Stores	15,427	864,048,300	22,732,800	2.63	50,931,700	17.0
Totals—18 Cos	35,373	$1,777,023,600	$43,045,900	2.42%	$124,776,400	14.2

d—Deficit.
e—Approximate.
f—Including wagon route stores.
h—Sales and Net Profits are for 53 weeks.
j—In Canadian dollars.
k—Controlled by National Food Products Corporation.

Sales and Net Profits are for years ended about December 31, 1932 (except Economy, year ended June 30, 1932; Bohack, year ended Jan. 31, 1933; A. & P., year ended Feb. 28, 1933; 1st National & Thrift, year ended about March 31, 1933; Loblaw, year ended May 31, 1933). In comparing figures as between companies, consideration should be given to differences in fiscal year closing dates.

Net Profits are after deducting all ordinary charges, generally including depreciation, interest and income taxes, but are before deducting any dividends paid.

Sales, Net Profits & Inventories of Grocery Chains

Companies	1933 Number of Stores at Year-End	1933 Sales	1933 Net Profits	Ratio-Net Profits to Sales	1933 Year-End Inventories	1933 Sales times Inventories
Safeway Stores	3,277	$220,156,800	$4,289,600	1.95%	$18,752,800	11.7
Kroger	4,400	205,691,700	4,546,200	2.21	18,627,000	11.0
American Stores	2,882	109,387,200	4,197,700	3.84	11,631,600	9.4
1st National	2,653	105,812,800	4,394,800	4.15	10,624,100	10.0
National Tea	1,299	64,973,600	1,180,400	1.82	5,839,600	11.1
H. C. Bohack Co	733	30,103,400	279,100	0.93	2,302,400	13.1
Grand Union	639f	28,293,400	344,800	1.22	2,787,000	10.2
Reeves (N. Y. C.)	685	23,948,300	377,300	1.58	2,017,800	11.9
Dominion Stores (h)	505	19,758,400	339,300	1.72	2,584,000	7.6
Economy (Boston)	446	14,972,700	160,400	1.07	1,224,600	12.2
Loblaw Groc. Co. Ltd. (h)	111	14,780,600	927,300	6.27	1,860,800	7.9
U. S. Stores	500e	13,105,900	205,900d	1.57d	962,500	13.6
Southern Grocery (j)	378	13,057,700	182,700	1.40	1,306,700	10.0
Pender (j)	391	11,840,900	125,000	1.06	1,468,700	8.1
Winn & Lovett	55	4,965,800	134,500	2.71	419,600	11.9
Thrift Stores Ltd. (h)	75	4,830,100	69,100	1.43	308,600	15.7
Oakley	75	2,972,400	56,700	1.91	387,600	7.7
Totals—17 Cos	19,104	888,651,700	21,399,000	2.41	83,104,800	10.7
A. & P. Stores	15,131	819,616,700	20,478,200	2.50	62,944,000	13.0
Totals—18 Cos	34,235	$1,708,268,400	$41,877,200	2.45%	$146,048,800	11.7

d–Deficit.
e–Approximate.
f–Including wagon route stores.
h–In Canadian dollars.
j–Controlled by National Food Products Corporation.

Sales and Net Profits are for years ended about December 31, 1933 (except Economy, year ended July 1, 1933; Bohack, year ended January 31, 1934; A. & P., year ended Feb. 28, 1934; First National and Thrift, years ended March 31, 1934; Loblaw, year ended May 31, 1934). In comparing figures as between companies, consideration should be given to differences in fiscal year closing dates.

Net Profits are after deducting all ordinary charges, generally including depreciation, interest and income taxes, but are before deducting any dividends paid.

Sales, Net Profits & Inventories of Grocery Chains

1934

Companies	Number of Stores at Year-End	1934 Sales	1934 Net Profits	Ratio-Net Profits to Sales	1934 Year-End Inventories	1934 Sales times Inventories
Safeway Stores	3,201	$242,966,400	$2,866,800	1.59%	$22,532,400	10.8
Kroger	4,352	221,175,300	4,198,200	1.90	20,916,900	10.6
American Stores	2,859	114,365,200	3,362,700	2.94	12,908,100	8.9
1st National	2,623	111,323,500	3,433,500	3.08	11,950,100	9.3
National Tea	1,245	62,789,300	462,800	0.74	6,196,500	10.1
H. C. Bohack Co	692	30,768,500	234,700	0.76	2,526,500	12.2
Grand Union	675b	28,561,600	284,600	1.00	3,077,000	9.3
Reeves (N. Y. C.)	637	24,663,400	251,100	1.02	1,959,600	12.6
Dominion Stores (f)	495	18,835,300	18,200	0.10	1,864,600	10.1
Economy (Boston)	419	15,658,900	228,500	1.46	1,268,200	12.3
Loblaw Groc. Co. Ltd. (f)	111	15,497,400	896,900	5.79	1,612,200	9.6
Southern Grocery (h)	372	14,824,300	241,900	1.63	1,411,600	10.5
Pender (h)	395	14,050,800	199,300	1.42	1,646,500	8.5
U. S. Stores	424	13,343,400	151,600d	1.14d	1,153,400	11.6
Winn & Lovett	55	4,914,300	130,600	2.66	424,200	11.6
Thrift Stores Ltd. (f)	72	4,697,600	32,800d	0.70d	304,400	15.4
Oakley	72	3,229,300	43,000	1.33	426,100	7.6
Totals—17 Cos	18,699	941,664,500	17,668,400	1.88	92,178,300	10.2
A. & P. Stores	15,035	842,015,900	16,708,700	1.98	72,394,000	11.6
Totals—18 Cos	33,734	$1,783,680,400	$34,377,100	1.93%	$164,572,300	10.8

b–Including wagon route stores.
d–Deficit.
f–In Canadian dollars.
h–Controlled by National Food Products Corporation.

Sales and Net Profits are for years ended about December 31, 1934 (except Economy, year ended June 30, 1934; Bohack, ended January 31, 1935; A. & P., ended Feb. 28, 1935; 1st National and Thrift, ended about March 31, 1935; Loblaw, ended May 31, 1935). In comparing figures as between companies, consideration should be given to differences in fiscal year closing dates.

Net Profits are after deducting all ordinary charges, generally including depreciation, interest and income taxes, but are before deducting any dividends paid.

[fol. 1914]

Sales, Net Profits & Inventories of Variety Chain Stores

Companies	Number of Stores at Year-End	1932 Sales	1932 Net Profits	Ratio-Net Profits to Sales	1932 Year-End Inventories	1932 Sales times Inventories
Kresge	719	$124,536,600	$5,656,700	4.54%	$13,792,800	9.0
Grant	446	73,086,900	1,588,500	2.17	8,282,500	8.8
Kress	230	62,776,900	3,428,100	5.46	10,168,400	6.2
Newberry	406	33,121,700	819,000	2.47	5,387,300	6.1
Murphy	176	18,532,000	646,900	3.49	2,437,400	7.6
Neisner	79	14,428,800	46,800d	0.32d	1,353,500	10.7
Fishman	30	2,623,200	85,600	3.26	404,200	6.5
Rose's	63	1,982,600	75,500	3.81	362,600	5.5
Totals—8 Cos	2,149	331,088,700	12,253,500	3.70	42,188,700	7.8
Woolworth (a)	1,932	249,892,900	15,945,100	6.38	27,728,600	9.0
Totals—9 Cos	4,081	$580,981,600	$28,198,600	4.85%	$69,917,300	8.3

a–Consisting only of figures for stores in U. S. A., Canada and Cuba. Since Sales do not include English and German affiliates, Net Profits were adjusted for comparative purposes to exclude $6,155,941 income from investments in England and Germany, etc.

d–Deficit.

Sales and Net Profits are for the calendar year 1932; except Grant, for year ended Jan. 31, 1933.

Net Profits are after deducting all ordinary charges, generally including depreciation, interest and income taxes, but are before deducting any dividends paid.

Sales, Net Profits & Inventories of Variety Chain Stores

1933

Companies	Number of Stores at Year-End	1933 Sales	1933 Net Profits	Ratio-Net Profits to Sales	1933 Year-End Inventories	1933 Sales times Inventories
Kresge	720	$125,972,800	$8,441,100	6.70%	$17,838,300	7.1
Grant	457	78,206,100	3,347,200	4.28	8,919,200	8.8
Kress	230	65,018,100	5,159,300	7.94	11,880,700	5.5
Newberry	417	35,146,600	1,568,100	4.46	6,148,700	5.7
Murphy	180	21,884,800	1,335,300	6.10	3,266,000	6.7
Neisner	80	14,356,000	461,300	3.21	1,397,900	10.3
Fishman	31	2,794,700	189,400	6.78	566,900	4.9
Rose's	68	2,679,800	187,100	6.98	428,200	6.3
Totals—8 Cos	2,183	346,058,900	20,688,800	5.98	50,445,900	6.9
Woolworth (a)	1,941	250,516,500	20,888,700	8.34	35,424,200	7.1
Totals—9 Cos	4,124	596,575,400	41,577,500	6.97	85,870,100	6.9
Green (b)	132	21,617,100	1,154,000	5.34	3,717,700	5.8
Totals—10 Cos	4,256	$618,192,500	$42,731,500	6.91%	$89,587,800	6.9

a–Consisting only of stores in U. S. A., Canada and Cuba. Since Sales do not include English and German affiliates, Net Profits were adjusted for comparative purposes to exclude $7,802,179 income from investments in England and Germany, etc.

b–Sales and Net Profits represent 12/13 of figures for the 13 months ended Jan. 31, 1934.

Sales and Net Profits are for the calendar year 1933; except Grant and Green, for years ended Jan. 31, 1934.

Net Profits are after deducting all ordinary charges, generally including depreciation, interest and income taxes, but are before deducting any dividends paid.

[fol. 1916] Sales, Net Profits & Inventories of Variety Chain Stores

Companies	Number of Stores at Year-End	1934 Sales	1934 Net Profits	Ratio-Net Profits to Sales	1934 Year-End Inventories	1934 Sales times Inventories
Kresge	731	$137,667,100	$9,835,600	7.14%	$17,508,900	7.9
Grant	465	85,069,600	2,616,200	3.08	10,331,300	8.2
Kress	232	75,662,300	5,872,400	7.76	11,934,300	6.3
Newberry	431	41,054,200	2,452,700	5.97	6,144,200	6.7
Murphy	186	28,001,000	1,947,300	6.95	3,636,900	7.7
Neisner	84	16,569,700	832,000	5.02	1,424,800	11.6
Rose's	73	3,539,300	293,400	8.29	606,700	5.8
Fishman	32	3,453,900	165,000	4.78	549,700	6.3
Totals—8 Cos	2,234	391,017,100	24,014,600	6.14	52,136,800	7.5
Woolworth (a)	1,957	270,684,800	21,755,600	8.04	38,132,100	7.1
Totals—9 Cos	4,191	661,701,900	45,770,200	6.92	90,268,900	7.3
Green	128	26,824,100	1,372,300	5.12	3,683,100	7.3
Totals—10 Cos	4,319	$688,526,000	$47,142,500	6.85%	$93,952,000	7.3

a–Consisting only of figures for stores in U. S. A., Canada and Cuba. Since Sales do not include English and German affiliates, Net Profits were adjusted for comparative purposes to exclude $10,386,794 income from investments in England and Germany, etc.

Sales and Net Profits are for the calendar year 1934; except Grant and Green, for years ended Jan. 31, 1935.

Net Profits are after deducting all ordinary charges, generally including depreciation, interest and income taxes, but are before deducting any dividends paid.

[fol. 1917] The Great Atlantic & Pacific Tea Company of America
(Chain Grocers)

Stores, Sales and Net Profits

Below are given the number of stores, sales, net profits and ratio of net profits to sales since 1915 of The Great Atlantic & Pacific Tea Company of America (incorporated under Maryland laws in May 1925, succeeding a business established in 1859) and predecessors:—

Years Ended about February 28	Number of Stores End Year	Sales	Net Profits	Ratio-Net Profits to Sales
1916	2,100e	$44,441,199	$1,820,598	4.10%
17	2,900e	76,430,565	2,688,264	3.52
18	3,750e	125,993,564	3,571,064	2.83
19	3,799	151,691,919	4,500,000e	2.97e
1920	4,246	194,646,959	5,803,333	2.98
21	4,638	235,302,887	2,520,940	1.07
22	5,217	202,433,531	7,203,266e	3.56e
23	7,350	246,940,873	6,502,828	2.63
24	9,303	302,888,369	8,404,424	2.77
1925	11,421	352,093,342	11,184,756	3.18
26	14,034	440,023,100	11,974,260	2.72
27	14,811	574,087,184	13,983,881	2.44
28	15,671	761,402,805	18,411,119	2.42
29	15,177	972,799,185	24,220,982	2.49
1930	15,418	1,053,692,882	26,219,631	2.49
31	15,737	1,065,806,885*	30,742,775*	2.88
32	15,670	1,008,325,093	29,792,975	2.95
33	15,427	864,048,257	22,732,772	2.63
34	15,131	819,616,727	20,478,190	2.50
1935	15,035	842,015,871	16,708,674	1.98
Totals—20 Years		$10,334,681,197	$269,464,732	2.61%

*—Largest on record.
e—Estimated.

[fol. 1918]

S. S. Kresge Company
(Chain Variety Stores)

Stores, Sales and Net Profits

Below are given the number of stores, sales, net profits and ratio of net profits to sales since 1909 of S. S. Kresge Company (incorporated under Michigan laws in March 1916, succeeding a business established in 1897) and predecessors:—

Calender Years	Number of Stores End Year	Sales	Net Profits	Ratio-Net Profits to Sales
1909	42	$5,116,099	$310,993	6.08%
1910	51	6,508,752	408,958	6.28
11	64	7,923,064	470,866	5.94
12	85	10,325,488	669,179	6.48
13	101	13,258,228	869,686	6.56
14	118	16,097,394	1,150,408	7.15
1915	139	20,943,301	1,293,220	6.17
16	160	26,396,548	2,129,348	8.07
17	164	30,090,700	1,860,989	6.18
18	170	36,309,513	1,700,999	4.68
19	174	42,668,061	2,280,202	5.34
1920	184	51,245,311	2,753,506	5.37
21	200	55,859,011	3,402,033	6.09
22	211	65,191,467	6,616,418	10.15
23	234	81,843,233	9,493,988	11.60
24	257	90,096,249	10,114,164	11.23
1925	306	106,055,412	11,809,261	11.13
26	367	119,300,074	12,504,442	10.48
27	435	133,847,477	13,977,066	10.44
28	506	147,465,448	15,642,853*	10.61
29	597	156,456,732*	14,952,211	9.56
1930	678	150,508,126	10,621,151	7.06
31	711	145,838,039	9,461,699	6.49
32	719	124,536,619	5,656,719	4.54
33	720	125,972,803	8,441,098	6.70
34	731*	137,667,131	9,835,594	7.14
Totals—26 Years		$1,907,520,280	$158,427,141*	8.31%

*—Largest on record.

[fol. 1919]

National Tea Co.
(Chain Grocers)

Stores, Sales and Net Profits

Below are given the number of stores, sales, net profits and ratio of net profits to sales since 1916 of National Tea Co. (incorporated under Illinois laws in February 1902, succeeding a business established in 1899):—

Calendar Years	Number of Stores End Year	Sales	Net Profits	Ratio-Net Profits to Sales
1916	(a)	$5,460,916	$280,265	5.13%
17	(a)	8,006,116	253,384	3.16
18	(a)	9,228,597	154,443	1.67
19	143	13,167,985	303,179	2.30
1920	163	18,705,980	166,739	0.89
21	261	16,283,147	534,043	3.28
22	295	20,632,332	957,409	4.64
23	514	31,292,239	1,088,894	3.48
24	598	39,058,830	1,472,993	3.77
1925	761	47,450,885	1,569,636	3.31
26	840	53,657,785	1,585,221	2.95
27	1,237	58,801,377	2,046,041	3.48
28	1,600	85,881,696	2,822,440*	3.29
29	1,627*	90,210,077*	2,731,267	3.03
1930	1,600	85,245,761	1,239,926	1.45
31	1,512	76,657,865	716,279	0.93
32	1,389	65,657,249	899,054	1.37
33	1,299	64,973,576	1,180,390	1.82
34	1,245	62,789,250	462,752	0.74
Totals—19 Years		$853,161,663	$20,464,355	2.40%

*—Largest on record.
a—Unavailable.

[fol. 1920]

J. C. Penney Company, Incorporated
(Chain Department Stores)

Stores, Sales and Net Profits

Below are given the number of stores, sales, net profits and ratio of net profits to sales since 1913 of J. C. Penney Company, Incorporated (organized under Delaware laws in December 1924, succeeding a business established in 1902) and predecessors:—

Calendar Years	Number of Stores End Year	Sales	Net Profits	Ratio-Net Profits to Sales
1913	48	$2,637,294	$333,609	12.65%
14	71	3,560,294	406,331	11.41
1915	86	4,825,072	559,078	11.59
16	127	8,428,144	1,069,236	12.69
17	177	14,881,203	900,466	6.05
18	197	21,338,104	695,754	3.26
19	197	28,783,965	1,877,693	6.52
1920	297	42,846,009	355,747d	0.83d
21	312	46,641,928	1,254,634	2.69
22	371	49,035,729	3,325,720	6.78
23	475	62,188,979	4,490,294	7.22
24	571	74,261,343	4,686,572	6.31
1925	676	91,062,616	7,452,568	8.18
26	745	115,683,023	8 918,273	7.71
27	892	151,957,865	9,248,700	6.09
28	1,023	176,698,989	10,588,972	5.99
29	1,395	209,690,418	12,413,378	5.92
1930	1,452	192,943,765	8,290,622	4.30
31	1,459	173,705,095	8,913,565	5.13
32	1,473	155,271,981	5,082,672	3.27
33	1,466	178,773,965	14,235,638	7.96
34	1,474*	212,053,361*	16,147,315*	7.61
Totals—22 Years		$2,017,269,142	$120,535,343	5.98%

*—Largest on record.
d—Deficit.

[fols. 1921-1922] Walgreen Co.
(Chain Drug Stores)

Stores, Sales and Net Profits

Below are given the number of stores, sales, net profits and ratio of net profits to sales since 1923 of Walgreen Co. (incorporated under Illinois laws in February 1909, succeeding a business established in 1902):—

Years(f)	Average Number of Stores Operated	Net Sales	Net Profits	Ratio-Net Profits to Sales
1923	37e	$3,614,349	$191,634	5.30%
24	50	5,586,443	439,110	7.86
1925	69	9,319,794	558,326	5.99
26	96	13,494,878	1,006,207	7.46
27	135	20,892,957	1,501,252	7.19
28	179	31,389,313	2,752,424	8.77
29	321	46,622,640	3,130,466*	6.71
1930h	419	39,128,245	1,591,356	4.07
31	447	54,017,179*	2,045,411	3.79
32	467	47,612,220	1,663,198	3.49
33	470	46,026,125	1,820,483	3.96
34	483*	53,654,657	2,558,895	4.77
Totals—11¾ Years		$371,358,800	$19,258,762	5.19%

*—Largest on record.
e—Estimated.
f—1923 to 1929 are for calendar years; 1930, for nine months ended Sept. 30; 1931 and onward, for years ended September 30.
h—For nine months ended September 30, 1930.

[fols. 1923-1927] Plaintiff's Exhibit "P"

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[fol. 1928]—The classification or groupings used throughout this report are as follows:

Department Stores with Annual Sales of $500,000 to $1,000,000 ..... Group I
Department Stores with Annual Sales of $1,000,000 to $2,000,000 ..... Group II
Department Stores with Annual Sales of $2,000,000 to $5,000,000 ..... Group III
Department Stores with Annual Sales of $5,000,000 to $10,000,000 ..... Group IV
Department Stores with Annual Sales over $10,000,000 ..... Group V
Specialty Stores (with Annual Sales over $500,000) ..... Group VI

* * * * * * *

[fols. 1929-1930] Departmental Results of Department Stores with Annual Sales of $500,000 to $1,000,000

* * * * * * *

[fols. 1931-1933] Departments Earning Over 5% of Sales in 1934 (with 1933 Data for Comparison)

Department	Rate of Profit 1934	1933
Silks and Velvets	6.6	2.5
Handkerchiefs	5.1	2.9
Gloves	8.8	5.2
Corsets and Brassieres	11.7	9.7
Hosiery	7.4	5.6
Knit Underwear (all materials)	7.1	5.0
Silk and Muslin Underwear	8.4	5.2
Negligees	7.4	5.7
Women's Coats and Suits	5.2	1.1
Sports Wear (Including Sweaters and Knit Apparel)	5.6	0.6
Aprons and House Dresses	6.0	0.0
Furs	7.3	7.8
Men's Furnishings	5.9	3.4
Basement Millinery	8.8	
Those With Losses Exceeding 5%		
Patterns	20.2	21.0
Lamps and Shades	8.4	9.9
China and Glassware	9.6	12.5
Major Household Appliances	5.4	7.7
Miscellaneous House Furnishings	8.5	11.6

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Departmental Result of Department Stores with Annual Sales of $1,000,000 to $2,000,000

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[fols. 1934-1936] Departments Earning Over 5% of Sales in 1934 With 1933 Data for Comparison

Department	1934	1933
Laces, Trimmings and Embroideries	5.1	0.2
Umbrellas	5.7	4.7
Handkerchiefs	5.3	5.4
Corsets & Brassieres	10.0	9.9
Hosiery	5.5	6.4
Silk & Muslin Underwear	6.5	5.9
Negligees	7.5	5.9
Furs	9.8	7.6
Basement Millinery	8.0	3.9

Departments Operating at Losses Exceeding 5%

Department	1934	1933
Patterns	13.8	16.4
Books and Magazines	5.9	8.7
Furniture	7.5	9.5
Miscellaneous Housefurnishings	7.0	10.1
Radio	14.1	11.4

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Departmental Results of Department Stores with Annual Sales of $2,000,000 to $5,000,000

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[fols. 1937-1938] Departments Earning Over 5% of Sales in 1934 With 1933 Data for Comparison

Department	1934	1933
Silks and Velvets	6.3	3.4
Woolen Dress Goods	8.0	6.3
Laces, Trimmings and Embroideries	6.3	L 3.3
Ribbons	6.3	L 0.4
Handkerchiefs	5.3	2.5
Corsets and Brassieres	9.4	9.3
Hosiery	5.1	5.9
Knit Underwear (all materials)	5.3	3.3
Petticoats and Slips	7.1	**
Negligees	6.3	5.2
Nurses' and Maids' Uniforms	7.4	8.2
Furs	6.1	5.6
Men's Furnishings	5.2	2.7

**Insufficient Data.

Departments Operating at Losses Exceeding 5%

Department	1934	1933
Patterns	12.4	13.9
Books and Magazines	5.4	12.6
Women's Dresses	6.6	7.1
Furniture	7.7	8.2
Oriental Rugs	10.0	23.5
Major Household Appliances	5.6	3.7
Miscellaneous House Furnishings	5.1	13.1
Gift Shop	10.0	10.2
Pictures, Framing and Mirrors	5.5	9.5
Radios	8.9	12.0
Toys	5.2	5.1
Sporting Goods and Cameras	9.1	9.1
Tires and Automobile Accessories	13.6	4.8

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Departmental Results of Department Stores With Annual Sales of $5,000,000 to $10,000,000

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[fol. 1939] Departments Earning Over 5% of sales in 1934 (with 1933 Data for Comparison)

Department	1934	1933
Woolen Dress Goods	5.4	5.8
Corsets and Brassieres	8.3	9.3
Negligees	6.9	6.4
Maids' and Nurses' Uniforms	10.9	10.6
Furs	7.4	3.4
Basement Millinery	9.6	5.3

Departments Operating at Losses Exceeding 5%

Department	1934	1933
Patterns	10.1	11.0
Furniture	6.1	5.1
Oriental Rugs	15.4	7.4
China and Glassware	5.0	7.1
Miscellaneous House Furnishings	7.0	8.5
Gift Shop	7.0	11.4
Pictures, Framing and Mirrors	8.5	2.5
Radios	5.9	7.1
Sporting Goods and Cameras	10.5	15.6
Tires and Automobile Accessories	12.2	0.1

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[fols. 1940-1941] Departmental Results of Department Stores With Annual Sales Over $10,000,000

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[fols. 1942-1943] Departments With Profits Over 5%

Department	1934	1933
Silks and Velvets	6.4	3.6
Woolen Dress Goods	6.9	5.1
Ribbons	6.5	L 0.5
Corsets and Brassieres	9.5	9.2
Knit Underwear	5.2	5.4
Petticoats and Slips	5.0	6.0
Maids' and Nurses' Uniforms	5.6	2.8
Furs	6.6	4.3
Men's Furnishings	6.7	5.9

Departments With Losses Over 5%

Department	1934	1933
Books and Magazines	6.1	7.0
Furniture	8.8	6.2
Oriental Rugs	7.9	8.2
China and Glassware	7.1	6.9
Miscellaneous House Furnishings	11.1	10.5
Gift Shop	14.4	22.7
Pictures, Framing and Mirrors	12.8	15.5
Radios	9.2	8.8
Toys	13.6	8.1
Sporting Goods and Cameras	14.7	15.2
Candy	8.0	4.0

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Departmental Results of Specialty Stores With Annual Sales Over $500,000

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[fols. 1944-1953] Departments Showing Earnings Over 4% of Sales in 1934 (With 1933 Data for Comparison)

Department	1934	1933
Corsets and Brassieres	5.9	7.1
Petticoats and Slips	6.1	5.9
Negligees	4.3	3.2
Furs	4.9	6.2
Men's Clothing	4.1	0.4
Men's Furnishings	4.7	3.7
Men's Hats and Caps	6.3	**

Departments Operating at a Loss Exceeding 4% of Sales in 1934

Department	1934	1933
Stationery	12.3	13.6
Infants' Wear	6.1	10.9
Small Leather Goods	4.2	3.7
Girls' Wear	7.1	5.9
Aprons and House Dresses	7.4	**
Gift Shop	9.7	15.3
Tops	4.2	**

**Insufficient data

* * * * * * *

(Here follow 4 photolithographs. Side folios 1954-1955, 1956-1968, 1969, 1970-1988.)

1934 MERCHANDISING AND OPERATING RESULTS

Of Department Stores With Annual Sales Volume of $2,000,000 to $5,000,000

TABLE No. 3

TYPICAL FIGURES*
(Representative Performance)

MERCHANDISING STATISTICS

OPERATING EXPENSES

Dept. No.	DEPARTMENTS	Cumulative Markon %	Markdowns (at retail) % To Sales	Stock Shortage % To Sales	Workroom Net Cost % To Sales Of Parent Dept.	Cash Discounts % To Sales	Gross Margin % To Sales	Number Of Stock Turns	Sales % To Last Year	Closing Stock % To Last Year	Sales % To Total Store	Closing Stock % To Total Store	Returns % To Gross Sales	$ Sales For Year Per Sq. Ft. Of Selling Space	AGE OF STOCKS AT INVENTORY: % Under 6 Mos.	% 6-12 Mos.	% 12-18 Mos.	ADMINISTRATIVE % To Sales	OCCUPANCY: Fixed Plant & Equip. Cost % To Sales	OCCUPANCY: Total Occupancy % To Sales	PUBLICITY: Newspaper Space Costs % To Sales	PUBLICITY: Total Publicity % To Sales	BUYING % To Sales	SELLING: Selling Salaries % To Sales	SELLING: General Selling Expense % To Sales	SELLING: Delivery Expense % To Sales	SELLING: Total Selling % To Sales	Total Operating Expense % To Sales	Results P (profit) or L (loss)
11	Silks and Velvets	40.1	8.9	2.1		4.5	**37.9**	3.3	112.	104.	2.5	3.2	2.0	41.	70.	20.	7.	7.5	3.3	6.0	3.3	5.4	3.8	5.9	2.0	0.7	9.6	**31.6**	P6.3
12	Woolen Dress Goods	40.6	5.8	1.8		1.6	**37.2**	3.4	116.	117.	0.7	0.9	2.1	44.	84.	11.	4.	7.2	3.0	5.4	2.4	4.1	3.6	5.5	1.9	0.7	8.1	**29.2**	P8.0
13	Wash Goods and Linings	39.6	6.7	1.6		1.9	**36.1**	3.6	125.	101.	1.4	1.7	1.1	30.	72.	20.	5.	7.7	4.3	6.9	2.3	4.4	3.6	6.6	1.7	1.0	9.6	**32.7**	P3.4
14	Linens (Household)	38.6	6.6	0.5		1.7	**36.1**	2.4	109.	97.	1.8	2.5	6.2	32.	68.	17.	11.	8.3	4.8	7.8	4.4	6.0	3.6	6.5	2.0	1.7	9.9	**36.2**	L0.1
15	Domestics—Muslins, Sheetings, etc.	34.3	5.9	0.8		1.7	**30.8**	3.0	104.	82.	1.4	1.7	3.7	43.	78.	11.	10.	8.2	3.9	6.1	3.2	5.1	3.7	5.1	1.8	1.7	9.1	**32.2**	L1.4
16	Patterns	36.6	1.2	0.8			**35.3**	1.1	105.	104.	0.3	1.3	1.5	24.	100.	0.	0.	9.9	5.3	7.5	1.4	8.0	2.9	14.5	2.9	1.3	19.7	**47.7**	L12.4
18	Blankets and Comfortables	37.4	6.1	0.7		1.7	**34.8**	2.6	100.	93.	1.0	1.5	7.7	30.	77.	12.	10.	8.2	3.8	6.6	4.5	6.0	3.7	5.0	1.8	1.6	8.7	**33.3**	P1.5
21	Laces, Trimmings and Embroideries	44.6	7.8	2.2		4.0	**42.5**	2.4	125.	96.	0.4	0.9	5.0	28.	56.	20.	10.	7.7	4.4	8.0	1.3	2.7	4.2	9.3	2.0	0.7	12.6	**36.2**	P6.3
22	Ribbons	46.0	6.0	2.0		3.6	**44.6**	2.2	114.	94.	0.2	0.4	2.0	36.	63.	19.	5.	8.1	9.6	12.0	0.5	1.9	3.8	9.4	1.8	1.2	13.3	**38.3**	P6.3
23	Notions	40.3	4.1	1.2		1.8	**38.7**	3.5	113.	107.	1.3	1.6	3.2	41.	79.	13.	6.	7.3	5.3	7.3	2.1	3.7	3.8	9.3	1.8	1.7	13.1	**36.2**	P2.5
24	Toilet Articles and Drug Sundries	34.8	4.3	2.0		1.2	**30.9**	3.4	105.	108.	3.4	4.0	1.7	81.	83.	10.	5.	7.6	3.8	6.5	3.2	4.2	3.4	3.8	2.4	1.7	7.5	**29.3**	P1.6
25-S	Silverware	40.6	4.9	0.8	0.8	1.2	**38.3**	2.3	114.	116.	0.7	1.3	5.9	50.	69.	14.	9.	8.6	5.2	7.9	4.6	5.9	3.8	6.6	2.1	1.1	10.4	**37.4**	P0.9
25-J	Jewelry	43.4	8.6	3.2	0.5	1.6	**37.5**	3.1	110.	104.	0.8	1.1	6.7	51.	68.	13.	9.	7.6	6.1	8.7	3.0	4.9	4.1	9.2	2.6	0.7	13.5	**38.3**	L0.8
26	Umbrellas, Parasols and Canes	38.3	3.7	1.3		1.8	**36.7**	4.4	106.	78.	0.2	0.2	3.2	42.	90.	3.	6.	8.0	5.0	7.2	2.1	3.2	3.5	6.4	2.5	1.5	10.6	**33.2**	P3.5
27	Art Needlework and Art Goods	40.9	5.9	1.8		1.6	**37.6**	2.9	129.	110.	1.0	1.7	8.4	16.	76.	13.	8.	7.2	5.1	8.3	2.4	4.0	4.5	9.3	2.0	1.5	13.2	**37.8**	L0.2
28-S	Stationery	41.4	4.4	2.1		1.2	**38.5**	3.4	117.	104.	1.0	1.4	2.3	40.	76.	10.	8.	7.5	6.0	8.6	2.8	4.3	3.6	8.7	2.3	1.2	12.5	**37.1**	P1.4
28-B	Books and Magazines	33.7	4.4	1.6		0.8	**31.3**	3.5	114.	101.	0.7	0.8	2.6	28.	69.	10.	9.	7.4	6.9	8.5	2.5	4.4	4.5	8.5	2.4	0.9	11.0	**36.7**	L5.4
31	Neckwear and Scarfs	39.8	8.0	1.6		5.1	**38.5**	7.1	127.	116.	1.1	0.7	12.2	54.	85.	10.	4.	6.9	5.2	7.9	3.0	4.9	3.7	9.0	2.0	0.7	12.3	**35.7**	P2.8
33	Handkerchiefs	40.9	4.6	1.3		1.9	**38.8**	4.3	113.	99.	0.7	0.6	1.2	63.	86.	8.	6.	7.2	4.8	7.1	2.7	4.6	3.7	7.8	2.3	0.7	11.7	**33.5**	P5.3
34	Millinery	47.8	11.3	1.4	1.4	4.2	**43.3**	10.7	115.	111.	2.2	0.6	10.2	20.	97.	3.	0.	6.4	8.5	10.2	4.3	6.7	6.5	8.2	2.5	1.4	12.1	**42.3**	P1.0
35	Gloves	39.5	7.3	1.6		1.4	**36.2**	3.3	112.	98.	1.5	1.8	5.4	88.	69.	16.	13.	7.6	3.4	5.5	3.0	4.5	3.5	7.0	2.0	0.6	9.9	**31.6**	P4.6
36	Corsets and Brassieres	41.4	4.5	0.5	0.5	4.8	**42.5**	3.9	110.	110.	1.4	1.6	13.3	37.	73.	20.	6.	7.2	2.9	5.3	2.8	4.6	4.3	7.0	1.7	1.0	10.7	**33.1**	P9.4
37	Hosiery	36.2	4.2	1.0		1.1	**34.1**	5.7	116.	98.	3.4	2.5	2.3	97.	85.	9.	5.	6.9	3.0	4.8	2.7	4.4	3.1	5.4	2.1	0.7	8.8	**29.0**	P5.1
38	Knit Underwear (all materials)	39.5	5.6	0.8		1.3	**37.0**	3.8	112.	96.	1.3	1.3	8.3	48.	76.	11.	11.	7.3	4.0	6.2	2.9	3.9	3.2	6.6	1.6	1.0	10.1	**31.7**	P5.3
39	Silk and Muslin Underwear	36.8	5.0	1.5	0.2	4.4	**36.9**	4.2	116.	107.	2.3	2.1	9.4	35.	75.	12.	12.	7.2	3.3	5.6	3.4	5.4	3.7	6.1	2.4	1.3	9.8	**32.0**	P4.9
41	Petticoats and Slips	38.2	3.2	1.2	0.2	3.8	**38.5**	4.5	116.	99.	2.1	2.2	8.3	47.	69.	21.	10.	7.0	4.4	5.9	3.4	4.9	4.1	6.1	2.0	0.9	9.3	**31.4**	P7.1
42	Negligees	39.5	6.6	1.6	0.2	4.9	**39.1**	4.7	120.	104.	0.5	0.4	16.0	21.	86.	8.	6.	6.7	6.7	7.6	3.4	4.8	3.8	5.7	2.6	1.0	9.3	**32.8**	P6.3
43	Infants' Wear	38.4	6.4	1.0	0.1	3.8	**37.3**	3.6	114.	92.	1.7	1.7	9.5	19.	74.	16.	9.	7.4	5.5	8.8	3.4	5.3	4.6	6.9	2.4	1.2	11.3	**36.4**	P0.9
46	Small Leather Goods	38.0	6.7	1.7	0.3	2.6	**35.1**	5.6	120.	110.	1.1	0.8	5.6	52.	83.	11.	5.	6.7	3.9	7.2	3.4	5.4	3.9	7.0	1.9	0.9	10.2	**34.1**	P1.0
47	Women's Shoes	40.9	10.3	0.8	0.4	2.8	**37.1**	2.6	114.	106.	3.0	3.7	13.0	35.	73.	18.	7.	8.3	4.7	7.0	3.2	5.3	4.4	7.4	2.0	0.9	10.6	**36.6**	P0.5
48	Children's Shoes	39.2	6.7	0.8		2.8	**36.7**	2.4	110.	112.	0.6	1.0	9.1	25.	68.	21.	7.	8.1	4.8	7.8	3.4	5.1	4.2	7.5	1.9	0.7	10.5	**35.6**	P1.1
51	Women's Coats and Suits	39.6	13.2	0.9	0.9	5.6	**34.9**	7.2	99.	105.	2.8	1.2	14.7	32.	95.	4.	1.	6.4	3.9	6.9	5.2	7.5	4.6	5.1	2.6	0.5	8.8	**35.2**	L0.3
53	Women's Dresses	39.1	17.8	1.6	1.2	5.8	**32.0**	7.8	107.	95.	2.6	1.3	17.4	29.	99.	1.	0.	6.8	4.7	8.1	4.7	7.7	5.1	6.0	2.2	0.8	9.9	**38.6**	L6.6
53-P	Popular Price Dresses	38.3	13.5	1.0	0.8	5.7	**33.3**	11.8	112.	122.	2.0	0.9	18.3	36.	100.	0.	0.	6.4	3.9	5.4	4.8	7.0	4.5	6.1	3.2	0.8	10.4	**34.5**	L1.2
54	Blouses and Skirts	37.9	8.7	1.5	0.4	5.3	**36.0**	5.2	128.	90.	1.3	0.7	21.2	41.	85.	8.	6.	6.5	3.7	6.9	3.8	4.9	4.2	7.8	3.5	0.6	12.3	**35.6**	P0.4
55-C	Juniors' and Misses' Coats and Suits	39.5	16.8	0.8	0.5	5.7	**34.2**	7.7	115.	105.	1.4	0.6	16.0	38.	92.	7.	1.	6.8	5.3	7.9	4.1	6.8	4.0	5.3	2.3	0.7	8.9	**35.3**	L1.1
55-D	Juniors' and Misses' Dresses	39.3	14.3	1.9	0.9	5.8	**34.3**	9.2	119.	108.	1.2	0.7	16.8	30.	100.	0.	0.	6.6	4.2	7.7	4.1	7.0	4.4	6.0	2.2	0.7	9.5	**36.2**	L1.9
55-J	Girls' Wear	38.2	10.0	1.1	0.2	5.3	**36.3**	5.1	114.	109.	1.3	0.9	14.2	22.	77.	17.	6.	7.3	5.4	8.7	4.4	6.9	4.6	6.9	1.9	1.5	10.6	**38.8**	L2.5

*Since each typical figure is selected independently of other figures for the same department, all the figures may not be in exact mathematical relationship, as would be the case were they all from one store.

(Table continued on next page)

670B

Table No. 3 Continued

1956-1968

MERCHANDISING STATISTICS

OPERATING EXPENSES

Dept. No.	DEPARTMENTS	Cumulative Markon %	Markdowns (at retail) % To Sales	Stock Shortage % To Sales	Workroom Net Cost % To Sales Of Parent Dept.	Cash Discounts % To Sales	Gross Margin % To Sales	Number Of Stock Turns	Sales % To Last Year	Closing Stock % To Last Year	Sales % To Total Store	Closing Stock % To Total Store	Returns % To Gross Sales	$ Sales For Year Per Sq. Ft. Of Selling Space	AGE OF STOCKS AT INVENTORY - % Under 6 Mos.	% 6-12 Mos.	% 12-18 Mos.	ADMINISTRATIVE % To Sales	OCCUPANCY Fixed Plant & Equip. Cost % To Sales	OCCUPANCY Total Occupancy % To Sales	PUBLICITY Newspaper Space Costs % To Sales	PUBLICITY Total Publicity % To Sales	BUYING % To Sales	SELLING Selling Salaries % To Sales	SELLING General Selling Expense % To Sales	SELLING Delivery Expense % To Sales	SELLING Total Selling % To Sales	Total Operating Expense % To Sales	Results P (profit) or L (loss)
56	Sports Wear (incl. Sweaters & Knit Apparel)	39.2	11.1	1.3	0.4	5.5	**35.9**	7.1	121.	113.	2.0	1.2	19.0	34.	89.	8.	3.	6.6	5.3	7.4	4.0	6.3	4.6	6.2	2.3	1.0	10.1	**35.8**	P0.1
57-A	Aprons and House Dresses	36.5	8.2	1.1	0.2	5.6	**35.4**	6.2	116.	123.	1.4	1.0	16.1	27.	82.	15.	3.	6.9	4.4	6.1	4.7	6.9	3.6	7.0	2.4	1.4	10.9	**35.3**	P0.1
57-U	Maids' and Nurses' Uniforms	37.8	5.3	1.3		5.2	**38.0**	5.0	125.	93.	0.7	0.4	10.4	29.	74.	16.	6.	7.3	3.0	5.4	2.4	4.3	3.0	7.0	2.0	1.2	10.8	**30.6**	P7.4
59	Furs	38.8	9.0	1.1	2.0	5.5	**35.1**	3.7	120.	113.	1.5	1.3	18.3	51.	76.	11.	9.	6.7	2.2	4.5	3.4	5.5	4.5	4.1	1.6	0.3	7.0	**29.0**	P6.1
61	Men's Clothing	39.2	7.3	1.3	4.6	2.9	**32.9**	2.6	112.	107.	2.8	4.2	7.1	33.	55.	29.	8.	7.2	4.9	7.4	4.3	6.8	3.3	5.5	2.0	0.7	8.4	**33.7**	L0.8
62	Men's Furnishings	38.1	4.9	1.5	0.3	2.3	**37.0**	3.6	120.	107.	4.2	4.5	5.3	54.	78.	13.	6.	7.4	4.2	6.2	3.3	5.3	3.2	5.8	2.1	1.0	9.1	**31.8**	P5.2
65	Men's Hats and Caps	41.0	7.6	1.5		3.4	**38.4**	2.6	114.	106.	0.3	0.3	3.4	28.	56.	25.	13.	8.7	5.5	9.5	3.0	5.0	3.6	7.0	2.2	1.0	10.9	**37.1**	P1.3
66	Boys' Wear	38.1	6.1	0.9	1.6	3.0	**35.3**	3.1	116.	101.	1.7	2.1	8.8	23.	63.	23.	11.	7.9	5.4	8.2	3.4	5.7	3.8	6.2	2.1	1.2	10.0	**36.1**	L0.8
67	Men's and Boys' Shoes	38.6	5.7	1.3	0.3	2.5	**36.2**	2.0	119.	116.	0.7	1.6	6.8	37.	75.	17.	6.	7.8	5.5	7.9	3.2	4.8	4.9	7.2	1.8	1.0	10.7	**35.1**	P1.1
71	Furniture (incl. Beds, Mattresses, & Springs)	42.6	8.6	0.5	2.7	1.3	**35.8**	2.5	111.	93.	3.8	6.4	13.6	9.	58.	19.	13.	7.6	7.6	12.1	5.5	7.0	4.2	5.4	3.9	3.9	13.2	**43.5**	L7.7
72	Oriental Rugs	39.9	15.3	0.2	0.4	1.2	**32.4**	0.8	106.	73.	0.5	1.0	24.8	11.	26.	27.	26.	11.0	10.7	14.9	3.0	4.5	4.5	4.3	2.3	1.2	8.5	**42.4**	L10.0
73	Domestic Floor Coverings	38.4	6.7	0.4	1.0	2.9	**35.7**	2.6	106.	95.	2.3	4.0	13.9	16.	58.	24.	13.	8.7	5.5	7.7	3.6	5.2	4.4	6.0	2.1	1.8	10.8	**36.7**	L1.0
74	Draperies, Curtains and Upholstery	44.3	6.6	1.7	1.4	1.6	**36.2**	2.4	112.	96.	2.4	4.1	9.9	21.	60.	20.	12.	8.5	4.6	7.5	3.4	5.3	4.2	7.1	2.5	1.8	11.1	**37.6**	L1.4
75	Lamps and Shades	43.5	7.5	1.0	0.2	1.3	**39.2**	3.0	120.	96.	0.6	0.9	11.7	12.	72.	13.	10.	7.5	7.0	12.0	3.9	6.0	4.6	7.1	3.0	3.7	13.3	**43.4**	L4.2
76	China and Glassware	43.5	8.2	0.9		1.0	**39.1**	1.6	111.	112.	1.2	3.2	6.7	11.	72.	13.	8.	9.1	8.7	11.0	3.5	5.5	4.4	7.3	4.3	3.7	14.5	**43.9**	L4.8
77	Major Household Appliances (Electrical & Other)	34.0	4.1	1.1	1.3	0.6	**30.3**	5.4	146.	110.	2.0	2.0	12.9	52.	86.	10.	3.	6.6	3.1	4.7	3.9	6.4	3.5	10.5	2.4	1.2	14.0	**35.9**	L5.6
78	Miscellaneous House Furnishings	38.4	6.2	1.4	0.7	1.3	**35.1**	2.9	115.	103.	2.2	3.0	6.7	11.	63.	24.	8.	7.0	5.8	9.1	5.2	6.7	4.0	6.8	2.8	4.7	13.3	**40.2**	L5.1
79	Gift Shop	42.6	9.3	2.4		1.1	**36.8**	2.3	116.	104.	0.4	0.9	7.5	12.	67.	14.	10.	8.1	12.8	15.7	2.7	4.1	4.9	9.2	3.8	2.4	14.5	**46.8**	L10.0
81	Pictures, Framing and Mirrors	45.1	8.1	1.5	2.0	1.2	**39.4**	2.2	112.	111.	0.3	0.5	8.3	12.	61.	10.	13.	8.0	6.7	10.8	2.2	4.6	5.2	8.6	2.9	3.2	15.4	**44.9**	L5.5
84	Radios, Talking Machines and Records	40.0	8.8	1.1	4.4	1.2	**31.8**	3.7	116.	103.	0.6	0.7	22.7	21.	83.	7.	6.	7.3	3.0	5.8	5.8	7.6	4.8	9.7	2.5	1.6	14.2	**40.7**	L8.9
91	Toys	40.1	7.6	1.4	0.2	1.3	**35.6**	2.8	110.	109.	0.9	1.3	5.8	16.	83.	5.	10.	7.2	6.1	8.4	3.8	6.5	3.3	8.4	3.9	2.4	15.1	**40.8**	L5.2
92	Sporting Goods and Cameras	37.7	8.7	2.6	0.3	1.4	**31.3**	2.1	110.	110.	0.5	1.1	5.8	13.	49.	30.	10.	9.8	7.1	12.0	3.8	5.0	4.0	7.9	1.5	1.3	10.6	**40.4**	L9.1
93	Luggage	39.4	4.8	1.0	0.4	1.3	**37.5**	3.0	117.	102.	0.4	0.5	7.7	16.	69.	15.	11.	8.5	6.3	10.6	3.5	5.7	3.8	6.4	1.5	1.3	9.9	**38.9**	L1.4
94	Tires and Automobile Accessories	36.4	5.5	4.2	0.9	1.2	**31.2**	2.1	88.	64.	0.4	0.2	5.1	16.	25.	71.	1.	8.5	9.9	12.2	3.5	6.4	6.6	7.2	2.0	1.5	10.7	**44.8**	L13.6
95	Restaurant, Luncheonette and Fountain						**43.1**		115.		2.2			18.				5.1	7.8	10.3	0.4	1.6	3.6	15.8			27.0	**48.6**	L5.5
96	Candy	36.4	2.6	2.9		1.1	**33.3**	12.8	112.	117.	0.6	0.3	0.5	45.				6.5	4.1	6.1	2.6	3.8	3.3	8.5	4.4	1.0	14.0	**34.1**	L0.8
	Total Main Store	39.2	8.1	1.3	0.5	2.9	**35.5**	3.6	116.	104.	85.1	89.5	9.8	24.	71.	17.	8.	7.9	5.2	7.9	3.3	5.2	3.9	6.6	2.1	1.3	10.7	**36.1**	L0.6
110	Piece Goods, Domestics	34.5	6.5	1.5		1.9	**31.5**	3.6	119.	105.	1.7	1.9	2.3	30.	79.	13.	8.	8.8	3.2	5.3	3.8	5.3	3.6	6.4	1.8	1.3	9.5	**33.1**	L1.6
120	Small Wares	36.3	8.2	3.4		1.6	**31.3**	4.8	101.	75.	0.4	0.4	3.0	28.	82.	11.	7.	7.4	3.5	5.1	4.5	6.7	3.2	7.9	1.8	1.9	11.8	**34.3**	L3.0
130	Hosiery, Underwear and Corsets	34.9	5.3	1.4		2.2	**33.0**	5.4	109.	107.	1.9	1.7	3.6	40.	84.	11.	5.	7.6	2.8	4.2	3.3	5.3	3.8	6.7	1.7	0.8	9.9	**30.9**	P2.1
135	Aprons and House Dresses	33.9	6.8	1.0		4.9	**32.8**	6.3	117.	106.	0.9	0.6	8.5	26.	88.	11.	1.	7.4	2.8	5.2	4.5	6.9	3.9	7.1	1.9	1.0	10.8	**34.2**	L1.4
150-C	Juniors', Misses' and Women's Coats	36.2	9.8	1.2	0.6	5.6	**34.6**	9.1	105.	117.	1.3	0.5	10.7	30.	98.	2.	0.	7.1	3.0	4.8	4.6	6.5	4.1	5.5	2.1	0.7	9.2	**31.7**	P2.9
150-D	Juniors', Misses' and Women's Dresses	34.8	11.0	1.6	0.2	5.5	**31.7**	11.9	106.	112.	1.8	0.7	10.8	29.	100.	0.	0.	7.2	3.0	4.8	5.6	7.8	4.7	6.0	2.0	0.9	9.1	**34.6**	L2.9
150-M	Millinery	43.7	8.6	1.3		4.5	**42.3**	18.6	109.	123.	0.9	0.1	3.7	26.	100.	0.	0.	7.1	3.2	5.8	4.4	6.7	4.5	8.9	2.2	1.0	12.3	**37.4**	P4.9
155	Girls' and Infants' Wear	35.7	7.5	0.8		4.7	**35.1**	4.8	114.	111.	0.9	0.6	6.6	25.	86.	11.	3.	7.4	3.0	5.3	4.2	6.4	3.7	6.7	2.3	1.0	11.0	**33.8**	P1.3
160	Men's and Boys' Wear	35.8	5.9	1.3	1.2	1.5	**32.4**	4.0	115.	104.	2.1	2.3	5.4	32.	78.	14.	7.	7.8	3.0	4.7	3.9	6.0	3.5	5.5	1.9	0.8	9.1	**32.1**	P0.3
170	Home Furnishings	37.1	4.8	1.1		2.0	**36.4**	3.5	121.	87.	1.4	1.4	5.7	16.	84.	13.	3.	7.8	4.3	7.5	3.9	5.5	3.7	5.5	1.9	2.5	9.6	**33.9**	P2.5
190	Shoes	36.8	7.0	1.0	0.2	2.2	**33.5**	3.5	108.	99.	1.9	2.2	6.6	33.	78.	16.	5.	7.8	3.6	5.5	3.7	5.7	5.2	7.2	2.2	0.8	10.5	**35.7**	L2.2
	Total Basement	35.3	7.1	1.3	0.3	3.0	**31.9**	5.1	114.	101.	14.9	10.5	6.4	28.	81.	13.	5.	7.6	3.6	4.8	4.0	6.0	3.9	6.4	1.8	1.0	9.3	**32.0**	L0.1
	TOTAL STORE	38.5	7.6	1.3	0.5	2.9	**35.1**	3.8	112.	103.			8.7	28.	72.	16.	8.	7.0	4.4	7.3	3.6	5.6	3.8	6.4	2.4	1.3	10.5	**35.0**	P0.1

Summary of 1934 Operations of Department Stores (Classified According to Sales Volume) and of Specialty Stores

With 1932 and 1933 Results Shown for Comparison

Group I—Sales Volume $500,000 to $1,000,000
Group II—Sales Volume $1,000,000 to 2,000,000
Group III—Sales Volume $2,000,000 to 5,000,000
Group IV—Sales Volume $5,000,000 to $10,000,000
Group V—Sales Volume over $10,000,000
Group VI—Specialty Stores (sales over $500,000)

P—(Profit) L—(Loss)

Dept. No.	DEPARTMENTS	GROUP I 1932	1933	1934	GROUP II 1932	1933	1934	GROUP III 1932	1933	1934	GROUP IV 1932	1933	1934	GROUP V 1932	1933	1934	GROUP VI 1932	1933	1934
11	Silks and Velvets	L 5.3	P 2.5	P 6.6	L 3.7	P 2.9	P 4.8	L 1.1	P 3.4	P 6.3	L 1.2	P 5.1	P 5.6	L 0.8	P 3.6	P 6.4			
12	Woolen Dress Goods	L 8.4	P 2.9	P 4.4	L 6.8	P 5.5	P 4.5	L 2.0	P 6.3	P 8.0	L 2.2	P 5.8	P 5.4	L 3.0	P 5.1	P 6.9			
13	Wash Goods and Linings	L 8.7	P 1.4	P 3.6	L 7.6	P 2.0	P 1.9	L 2.8	L 1.0	P 3.4	L 2.7	P 2.2	P 3.4	L 5.5	L 0.4	P 2.8			
14	Linens (Household)	L 7.3	0.0	P 1.5	L 6.7	P 0.8	P 0.9	L 7.8	L 2.5	L 0.1	L 5.3	L 1.1	P 0.4	L 6.7	P 1.1	L 0.9			
15	Domestics—Muslins, Sheetings, etc.	L 8.5	L 0.7	L 1.3	L 6.6	P 3.1	P 1.4	L 7.0	L 0.3	L 1.4	L 3.8	P 1.5	L 1.1	L 3.9	P 3.5	P 0.8			
16	Patterns	L18.4	L21.0	L20.2	L15.7	L16.4	L13.8	L14.0	L13.9	L12.4	L13.3	L11.0	L10.1	L 4.1	L 6.1	L 4.0			
18	Blankets and Comfortables	L13.4	L 2.0	L 2.2	L11.1	P 0.6	L 1.6	L 9.5	L 1.7	P 1.5	L 9.1	L 0.3	P 0.8	L 8.2	L 1.8	L 2.5			
21	Laces, Trimmings and Embroideries	L 6.1	L 2.6	P 3.6	L 7.2	P 0.7	P 5.1	L 4.7	L 3.3	P 6.3	L 5.1	L 2.0	P 1.5	L 0.4	P 5.8	P 4.0			
22	Ribbons	L11.8	L 6.3	L 1.8	L 7.6	L 0.1	P 2.6	P 0.1	L 0.4	P 6.3	L 0.9	P 4.9	P 4.2	L 2.0	L 0.5	P 6.5			
23	Notions	L 4.4	L 2.4	P 1.9	P 0.3	P 1.8	P 2.7	L 1.1	P 0.4	P 2.5	P 0.8	P 1.0	P 2.2	P 1.7	P 1.5	P 1.7			
24	Toilet Articles and Drug Sundries	L 3.4	P 0.4	P 2.2	P 0.8	P 1.7	P 2.7	L 1.9	L 1.9	P 1.6	L 0.8	L 1.4	P 2.3	L 2.0	L 1.8	P 0.4	L 1.3	L 0.5	L 0.8
25-S	Silverware	L12.9	L 1.4		L 6.0	L 1.8	L 0.3	L 8.1	L 2.9	P 0.9	L 7.3	L 4.2	P 0.7	L 8.8	L 3.9	L 3.7			
25-J	Jewelry	L 7.6	L 4.8	L 1.5	L 5.8	L 2.4	L 1.8	L 8.3	L 6.2	L 0.8	L 5.2	L 3.1	P 1.1	L 4.6	L 1.3	L 3.1	L 9.2	L 4.1	L 2.4
26	Umbrellas, Parasols and Canes	L 2.8	L 0.9	P 2.3	L 2.8	P 4.7	P 5.7	L 3.2	P 4.2	P 3.5	L 1.3	P 2.5	P 3.1	0.0	P 8.9	P 4.1	L 4.3		P 0.8
27	Art Needlework and Art Goods	L11.4	L 7.5	P 2.3	L 9.2	L 1.9	P 1.7	L 8.5	L 3.6	L 0.2	L12.7	L 4.6	L 0.3	L13.5	L 8.4	L 2.8			
28-S	Stationery	L12.0	L 5.7	L 3.7	L 4.7	L 0.9	P 0.4	L 5.4	L 2.2	P 1.4	L 5.4	L 2.3	P 1.3	L 6.2	L 3.9	L 2.3	L19.8	L13.6	L12.3
28-B	Books and Magazines		L 5.2	L 2.6	L 7.9	L 8.7	L 5.9	L14.6	L12.6	L 5.4	L10.6	L 6.9	L 3.4	L10.1	L 7.0	L 6.1			
31	Neckwear and Scarfs	L 2.6	L 1.1	P 4.1	L 1.8	P 0.8	P 4.6	L 2.2	L 1.4	P 2.8	L 1.4	L 0.5	P 2.3	L 1.4	P 0.6	P 0.6	L 9.3	L 3.0	P 0.2
33	Handkerchiefs	L 4.9	P 2.9	P 5.1	L 3.0	P 5.4	P 5.3	L 4.0	P 2.5	P 5.3	L 2.1	P 5.0	P 3.9	L 3.1	P 2.2	P 3.2	L 8.2	L 2.1	L 1.7
34	Millinery	L 3.6	L 1.1	L 1.5	L 2.7	P 2.7	P 4.1	L 1.5	L 1.5	P 1.0	L 2.1	L 0.4	P 3.9	L 5.0	L 1.4	L 0.9	L 5.3	L 2.9	L 0.7
35	Gloves	L 1.9	P 5.2	P 8.8	P 0.6	P 6.6	P 3.6	L 2.3	P 3.4	P 4.6	L 2.2	P 3.5	P 4.6	L 1.9	P 4.0	P 3.3	L 3.7	P 2.1	P 1.6
36	Corsets and Brassieres	P 6.9	P 9.7	P11.7	P 7.5	P 9.9	P10.0	P 7.7	P 9.3	P 9.4	P 6.4	P 9.3	P 8.3	P 9.1	P 9.2	P 9.5	P 4.1	P 7.1	P 5.9
37	Hosiery	P 0.6	P 5.6	P 7.4	P 3.8	P 6.4	P 5.5	P 2.5	P 5.9	P 5.1	P 3.2	P 5.3	P 5.4	P 2.5	P 6.1	P 4.2	L 1.2	P 4.7	P 2.6
38	Knit Underwear (all materials)	L 3.6	P 5.0	P 7.1	L 2.3	P 5.5	P 3.7	L 0.9	P 3.3	P 5.3	P 0.7	P 5.7	P 4.3	L 0.7	P 5.4	P 5.2	L 5.2	P 2.1	0.0
39	Silk and Muslin Underwear	L 0.9	P 5.2	P 8.4	P 0.6	P 5.9	P 6.5	L 2.8	P 1.7	P 4.9	P 2.9	P 2.7	P 4.2	P 1.4	P 2.9	P 3.6	L 4.1	P 1.0	P 3.3
41	Petticoats and Slips							L 2.1		P 7.1				P 6.2	P 6.0	P 5.0	P 3.3	P 5.9	P 6.1
42	Negligees	L 4.7	P 5.7	P 7.4	P 0.1	P 5.9	P 7.5	P 0.8	P 5.2	P 6.3	P 3.5	P 6.4	P 6.9	L 0.5	P 2.4	P 3.4	P 0.2	P 3.2	P 4.3
43	Infants' Wear	L 7.3	P 0.8	P 2.5	L 6.3	P 1.4	P 2.7	L 8.1	L 2.7	P 0.9	L 5.0	L 1.2	P 0.8	L 7.6	L 3.4	L 3.2	L12.0	L10.9	L 6.1
46	Small Leather Goods	L 6.3	L 0.5	P 2.8	L 4.5	P 1.4	P 2.0	L 6.0	L 1.8	P 1.0	L 5.0	L 1.7	P 1.5	L 2.1	P 0.7	P 1.1	L 6.5	L 3.7	L 4.2
47	Women's Shoes	L 5.8	P 0.4	P 4.2	L 4.6	P 1.5	P 2.4	L 8.4	L 3.1	P 0.5	L 5.1	L 1.8	L 0.3	L 1.6	L 0.9	P 0.2	L 4.7	L 3.1	L 1.3
48	Children's Shoes	L11.2	L 3.4		L 7.4	P 1.2	L 2.6	L 6.6	L 1.7	P 1.1	L 6.7	L 0.7	P 0.2	L 1.0	P 0.1	L 0.8			
51	Women's Coats and Suits	L 4.7	P 1.1	P 5.2	L 2.9	P 1.6	P 2.5	L 3.4	L 0.7	L 0.3	L 1.3	L 0.1	P 1.8	L 1.7	P 1.2	P 0.6	L 2.9	P 0.4	P 1.6
53	Women's Dresses	L10.7	L 4.5	L 0.7	L12.4	L 3.2	L 2.3	L11.0	L 7.1	L 6.6	L13.1	L 8.3	L 4.1	L14.5	L 7.6	L 4.8	L 9.3	L 3.5	L 2.8
53-P	Popular Price Dresses	L 4.8	P 0.2		L 3.4	L 1.0	P 0.8	L 4.7	L 2.1	L 1.2	L 4.9	L 1.8	P 1.4	L 5.0	P 1.9	L 0.2	L 5.4	L 2.6	L 2.7
54	Blouses and Skirts	P 0.4	P 0.3	P 4.4	L 3.2	P 1.7	P 1.8	L 1.8	L 1.8	P 0.4	P 0.2	L 0.4	P 3.8	L 7.9	L 2.9	P 1.1	L 6.5	L 6.9	P 1.6
55-C	Juniors' and Misses' Coats and Suits	L10.6	L 4.8		L 0.2	P 2.4	P 0.4	L 3.3	L 0.4	L 1.1	L 0.9	P 0.8	P 2.9	L 2.9	L 1.2	L 1.8	L 2.5	L 1.9	L 0.6
55-D	Juniors' and Misses' Dresses	L10.9	L 3.1		L10.6	L 1.2	L 3.1	L 9.7	L 3.6	L 1.9	L10.2	L 2.9	L 0.6	L10.4	L 4.3	L 4.8	L 5.2	L 2.7	L 0.2
55-J	Girls' Wear	L 8.7	P 0.2	P 0.6	L 5.9	L 0.1	P 2.7	L10.9	L 5.6	L 2.5	L 6.8	L 0.7	L 1.8	L 5.5	L 3.6	L 1.9	L13.4	L 5.9	L 7.1

(Table continued on next page)

TABLE No. 7 Continued

1970

Summary of Operations of Department Stores (Classified According to Sales Volume) and of Specialty Stores

—Continued

Dept. No.	DEPARTMENTS	GROUP I 1932	1933	1934	GROUP II 1932	1933	1934	GROUP III 1932	1933	1934	GROUP IV 1932	1933	1934	GROUP V 1932	1933	1934	GROUP VI 1932	1933	1934
56	Sports Wear (incl. Sweaters & Knit Apparel)	L 6.2	P 0.6	P 5.6	L 3.5	P 3.1	P 4.8	L 5.5	L 3.5	P 0.1	L 6.9	L 1.9	P 0.7	L 6.7	L 4.7	L 3.3	L 5.8	L 5.7	L 1.7
57-A	Aprons and House Dresses	L10.6	0.0	P 6.0	L 6.0	P 1.3	L 0.9	L 4.3	L 3.2	P 0.1	L 4.0	L 3.6	L 0.2	L 4.4	L 2.9	L 2.5	L 7.7		L 7.4
57-U	Maids' and Nurses' Uniforms							L 4.1	P 8.2	P 7.4	P 6.5	P10.6	P10.9	P 3.6	P 2.8	P 5.6			
59	Furs	L 1.5	P 7.8	P 7.3	L 1.9	P 7.6	P 9.8	L 0.6	P 5.6	P 6.1	L 6.2	P 3.4	P 7.4	L 4	P 4.3	P 6.6	L 3.6	P 6.2	P 4.9
61	Men's Clothing	L12.4	L 3.4	P 1.1	L15.1	L 0.6	P 0.8	L 7.5	L 0.3	L 0.8	L 9.2	L 2.6	L 0.6	L10.4	L 1.6	L 2.0	L 9.0	P 0.4	P 4.1
62	Men's Furnishings	L 5.0	P 3.4	P 5.9	L 3.4	P 4.4	P 4.4	L 3.1	P 2.7	P 5.2	L 2.0	P 4.7	P 4.5	P 0.5	P 5.9	P 6.7	L 5.5	P 3.7	P 4.7
65	Men's Hats and Caps				L10.1	P 0.6	P 2.0	L 4.5	L 1.2	P 1.3	L 7.3	L 3.0	L 1.0	L 5.3	P 0.2	0.0	L 9.7		P 6.3
66	Boys' Wear	L 9.7	0.0	P 3.2	L10.5	L 2.2	L 0.9	L 7.7	L 3.0	L 0.8	L 9.3	L 2.7	L 1.0	L 6.6	L 0.7	P 1.6	L 9.3		L 3.1
67	Men's and Boys' Shoes	L 6.9	L 5.3	L 2.5	L11.6	P 0.1	L 0.9	L 6.0	P 0.7	P 1.1	L 6.7	L 2.0	P 2.3	L 4.3	P 2.9	P 0.8	L 5.2		P 2.0
71	Furniture (incl. Beds, Mattresses, & Springs)	L25.0	L 8.7	L 3.8	L25.5	L 9.5	L 7.5	L15.4	L 8.2	L 7.7	L16.9	L 5.1	L 6.1	L15.8	L 6.2	L 8.8			
72	Oriental Rugs							L33.4	L23.5	L10.0	L31.9	L 7.2	L15.4	L18.3	L 8.2	L 7.9			
73	Domestic Floor Coverings	L22.5	L 6.7	L 0.9	L13.5	L 0.9	L 0.9	L 8.6	L 2.8	L 1.0	L10.9	L 0.9	P 1.1	L 7.2	P 0.7	P 0.6			
74	Draperies, Curtains and Upholstery	L 8.1	L 5.5	P 0.6	L12.0	L 2.0	L 0.2	L 7.2	L 2.3	L 1.4	L 7.4	L 4.3	L 3.5	L12.7	L 3.8	L 3.4			
75	Lamps and Shades	L17.1	L 9.9	L 8.4	L 8.7	L 2.7	P 1.7	L12.7	L 7.3	L 4.2	L13.2	L 6.0	L 4.9	L 8.4	L 4.5	L 4.1			
76	China and Glassware	L28.7	L12.5	L 9.6	L18.1	L 6.8	L 2.4	L12.9	L 8.6	L 4.8	L16.5	L 7.1	L 5.0	L16.4	L 6.9	L 7.1			
77	Major Household Appliances (Electrical & Other)	L18.0	L 7.7	L 5.4	L16.0	L 7.8	L 4.1	L13.0	L 3.7	L 5.6	L14.6	L 4.6	L 3.8	L 6.1	L 2.3	L 2.4			
78	Miscellaneous House Furnishings	L16.8	L11.6	L 8.5	L12.3	L10.1	L 7.0	L13.0	L13.1	L 5.1	L14.1	L 8.5	L 7.0	L13.8	L10.5	L11.1			
79	Gift Shop	L13.4	L 6.1	P 1.9	L16.4	L 8.7	L 1.3	L18.6	L10.2	L10.0	L 8.5	L11.4	L 7.0	L25.9	L22.7	L14.4	L15.9	L15.3	L 9.7
81	Pictures, Framing and Mirrors					L 8.8		L18.8	L 9.5	L 5.5	L11.6	L 2.5	L 8.5	L15.7	L15.5	L12.8			
84	Radios, Talking Machines and Records	L24.0	L 8.5	L 2.0	L23.0	L11.4	L14.1	L20.9	L12.0	L 8.9	L13.9	L 7.1	L 5.9	L21.5	L 8.8	L 9.2			
91	Toys	L14.4	L 3.4	L 2.5	L 9.3	P 1.5	P 2.5	L 7.8	L 5.1	L 5.2	L11.2	L 6.4	L 4.8	L 7.6	L 8.1	L13.6			L 4.2
92	Sporting Goods and Cameras				L21.2	L13.7		L 6.7	L 9.1	L 9.1	L14.2	L15.6	L10.5	L19.6	L15.2	L14.7			
93	Luggage	L17.2	L 3.3	P 2.1	L14.8	L 5.8	L 0.6	L16.4	L12.1	L 1.4	L12.9	L 7.0	L 4.2	L10.9	L 4.8	L 3.0			
94	Tires and Automobile Accessories	L13.3	L 9.4		L22.2	L 7.3		L 9.0	L 4.8	L13.6	L 9.6	L 0.1	L12.2						
95	Restaurant, Luncheonette and Fountain				L 6.4	L 5.0	L 2.6	L 5.4	L 8.9	L 5.5	L 3.3	L 6.1	L 6.3	L 5.4	L 7.2	L 8.0			
96	Candy	L 9.5	L 5.0	P 1.7	L 6.3	L 1.6	L 2.1	L 1.8	L 1.7	L 0.8	L 3.4	L 4.0	L 1.0	L 9.9	L 4.0	L 8.1			
	Total Main Store				L 7.1	P 0.5	P 0.5	L 7.0	L 1.8	L 0.6	L 6.7	L 1.9	0.0	L 6.4	L 1.9	L 1.2			
110	Piece Goods, Domestics	L14.4	L 5.4		L11.7	L 3.3	L 3.0	L 7.6	L 0.7	L 1.6	L 8.9	L 0.9	L 2.6	L 4.1	L 0.2	P 0.4			
120	Small Wares							L 4.8	L 2.3	L 3.0	L 7.8	L 0.8	L 3.6	L 4.6	L 1.4	L 0.3			
130	Hosiery, Underwear and Corsets	L10.9	L 0.8	P 0.2	L 0.3	P 2.9	L 1.2	L 0.5	P 2.1	P 2.1	P 0.9	P 3.0	P 2.9	L 1.1	P 3.4	P 3.4			
135	Aprons and House Dresses				L 4.8	L 1.0	L 4.5	L 6.2	L 1.5	L 1.4	L 3.5	L 3.7	P 1.4	L 8.6	L 4.2	L 4.0			
150-C	Juniors', Misses' and Women's Coats	L 6.2	P 5.0	P 4.7	L 2.1	P 3.8	P 0.2	L 2.3	P 3.0	P 2.9	L 1.3	P 2.7	P 2.4	P 0.5	P 2.4	P 1.5			
150-D	Juniors', Misses' and Women's Dresses	L 9.1	L 3.4	L 2.6	L 6.9	P 0.1	L 3.1	L 3.9	L 2.9	L 2.9	L 9.2	L 5.2	L 3.3	L 8.1	L 6.1	L 2.8			
150-M	Millinery			P 8.8	P 1.9	P 3.9	P 8.0	P 5.9	P 6.0	P 4.9	P 5.1	P 5.3	P 9.6	P 0.6	P 2.4	P 3.5			
155	Girls' and Infants' Wear				L 5.5	L 1.3	P 2.1	L 3.3	P 1.5	P 1.3	L 5.3	L 0.4	L 0.7	L 4.2	P 0.3	L 2.5			
160	Men's and Boys' Wear	L12.0	L 3.2		L 6.8	P 0.9	L 2.5	L 2.1	P 1.9	P 0.3	L 3.4	P 1.8	P 3.2	L 3.1	P 2.3	P 2.4			
170	Home Furnishings							L10.7	L 1.3	P 2.5	L 3.4	L 2.1	L 0.8	L 4.8	P 0.6	L 0.9			
190	Shoes	L 5.4	P 0.5	L 1.6	L 2.1	P 2.1	L 0.4	L 0.5	L 0.8	L 2.2	L 1.5	P 0.8	L 0.5	L 3.6	L 0.5	L 0.4			
	Total Basement	L13.6	L 3.9	L 2.6	L 5.2	0.0	L 1.1	L 4.4	L 0.5	L 0.1	L 3.3	P 0.7	P 0.8	L 2.5	P 0.7	P 1.0			
	TOTAL STORE	L 7.9	L 0.7	P 1.3	L 6.6	P 0.4	P 0.8	L 5.3	L 0.8	P 0.1	L 5.5	L 1.5	P 0.4	L 6.1	L 1.1	L 0.6	L 4.7	L 1.5	P 0.9

[fol. 1989] PLAINTIFF'S EXHIBIT "V"

National Tea Co., Minneapolis, Minn.

Minnesota Sales

Year 1935

Code No.	Address	Sales Store & Mkt.	Total Stores & Markets Net
127	Winona	134,822.93	731.53*
128	Mankato	116,640.78	34.55*
82	Hibbing	112,477.31	1,826.65
735	2941 Hennepin Ave., Mpls	97,202.25	5,444.61*
548	388 Wabasha, St. Paul	89,103.61	5,476.37*
26	14 W. Superior, Duluth	88,142.97	2,647.38*
147	Brainerd	85,013.76	422.58*
742	3406 E. 50th St., Mpls	81,551.83	801.72
81	Two Harbors	81,354.03	1,269.32*
547	537 Wabasha, St. Paul	80,377.13	36.33
531	173 Western, St. Paul	73,824.40	859.75
101	Albert Lea	73,243.91	1,038.79
725	1417 Nicollet Ave., Mpls	73,089.54	2,186.22*
80	Eveleth	71,094.68	1,361.01
721	2212 Hennepin, Mpls	69,201.23	305.23*
146	Little Falls	68,889.84	1,624.10
76	Virginia	66,635.77	19.67*
654	2605 Hennepin, Mpls	64,433.50	958.65*
131	Austin	63,981.66	2,343.50*
107	Faribault	63,948.35	1,344.11*
144	St. Cloud	63,793.83	1,837.65*
75	Grand Rapids	62,705.21	2,521.65
129	Hopkins	62,674.66	731.47
739	5300 Lyndale, Mpls	62,158.50	4,423.67*
119	Wabasha	62,111.42	1,128.40
78	Cloquet	59,707.61	870.15*
528	1816 St. Clair St., St. Paul	55,177.52	287.06*
619	4000 Central, Mpls	53,861.60	32.54
540	385 N. Prior Ave., St. Paul	53,749.49	325.41*
740	3404 Lyndale, Mpls	52,374.92	961.28*
140	Montevideo	51,878.61	614.57
546	2282 Como Ave., St. Paul	51,826.39	824.35*
536	617 Grand Ave., St. Paul	49,915.29	479.74
126	St. James	49,763.21	477.92
620	1403 Chicago Ave., Mpls	49,584.69	2,475.66*
722	4600 Nicollet Ave., Mpls	48,661.95	1,089.42
678	4159 Minnehaha, Mpls	48,642.68	1,147.28*
733	21 E. 26th St., Mpls	48,372.08	791.90*
533	181 N. Snelling Ave., St. Paul	48,229.21	99.80
544	252 S. Cleveland, St. Paul	47,989.86	1,218.95*
659	7 E. Lake, Mpls	47,141.77	2,589.08*
515	644 Smith, St. Paul	47,074.37	30.40*
645	1337 E. Franklin, Mpls	45,602.66	2,247.61*
665	3531 E. Lake, Mpls	44,816.04	3,998.57*
719	3760 Nicollet, Mpls	44,641.17	2,607.78*
737	1613 E. Lake, Mpls	43,844.11	6,465.85*
130	Fairmont	42,828.18	2,173.55*
102	Windom	42,756.10	109.05
674	3944 Lyndale, So., Mpls	42,675.89	1,503.32*
132	Morris	42,667.60	255.79
527	2038 Marshall, St. Paul	42,136.17	222.25

* Red in copy.

PLAINTIFF'S EXHIBIT "V"—Continued

National Tea Co., Minneapolis, Minn.

Minnesota Sales

Year 1935

Code No.	Address	Sales Store & Mkt.	Total Stores & Markets Net
145	Staples	41,848.12	66.45*
120	Lake City	41,549.37	1,573.73
734	2601 Bloomington, Mpls	41,497.86	946.76*
150	Fergus Falls	41,317.20	2,010.96*
10	5701 Grand Ave., Duluth	40,658.41	511.68*
148	Bemidji	40,360.29	2,821.58*
110	Redwood Falls	39,896.36	351.80*
17	4023 Woodland, Duluth	39,783.96	2,072.76*
709	417 14th Ave. S. E., Mpls	39,349.19	1,217.38*
723	1934 4th Ave. So., Mpls	39,327.64	1,284.62*
109	Hastings	38,648.75	985.04
693	1816 E. 38th St., Mpls	38,254.69	1,559.86*
529	165 N. Dale St., St. Paul	38,215.65	1,356.04*
545	1041 Grand Ave., St. Paul	38,145.34	1,859.47*
622	2500 Chicago, Mpls	38,109.35	1,220.03*

[fol. 1990] National Tea Company, Minneapolis, Minn.

Minnesota Sales

Year 1935

Code No.	Address	Sales Store & Mkt.	Total Stores & Markets Net
642	5006 Xerxes So., Mpls	38,059.37	525.04*
106	St. Peter	37,892.09	682.62*
731	4315 E. 54th St., Mpls	37,584.25	412.82*
112	Northfield	37,229.51	474.61
716	3804 Chicago, Mpls	37,192.81	2,810.48*
79	Carlton	37,114.29	684.55
736	1514 Como, Mpls	36,963.10	1,993.58*
105	New Ulm	36,900.84	434.11*
116	Waseca	36,724.60	147.15
712	4163 Lyndale No., Mpls	36,690.62	1,385.58*
613	4600 Bryant Ave. S., Mpls	36,572.71	1,346.98*
720	4313½ Upton So., Mpls	36,135.94	1,491.38*
141	Sauk Centre	35,220.23	122.92*
118	Hutchinson	35,217.01	1,666.46*
601	752 Adams St. N. E., Mpls	35,009.28	964.71*
149	Crookston	34,607.44	3,109.16*
672	2553 Lyndale So., Mpls	33,350.12	75.45
728	3755 Bloomington, Mpls	32,868.88	1,016.79*
650	3801 Grand Ave. S., Mpls	32,235.98	2,328.12
732	409 E. Hennepin, Mpls	31,987.47	2,921.16*
628	813 W. 50th St., Mpls	31,650.23	414.70*
139	Willmar	31,602.09	3,508.75*
115	Waterville	31,566.37	375.20
621	1729 Chicago, Mpls	31,267.84	506.39*
24	2802 W. 3rd St., Duluth	29,521.65	2,602.31*
671	1925 Lyndale Ave. So., Mpls	28,752.94	881.19*
741	2406 Central, Mpls	28,063.22	3,063.51*
610	4702 Bryant Ave. No., Mpls	26,675.28	403.88*
530	1216 Selby Ave., St. Paul	26,225.37	477.37*

* Red in copy.

National Tea Company, Minneapolis, Minn.—Continued

Minnesota Sales

Year 1935

Code No.	Address	Sales Store & Mkt.	Total Stores & Markets Net
15	4507 E. Superior, Duluth	26,145.07	2,317.87*
743	3401 Chicago, Mpls	26,092.82	2,043.04*
633	3302 W. 44th, Mpls	26,037.67	651.16*
13	11 N. 21st Ave. W., Duluth	25,961.38	811.08*
694	2303 E. 38th St., Mpls	25,293.89	701.41*
111	Marshall	25,223.78	880.23*
638	2809 E. 42nd St., Mpls	24,353.29	808.12*
125	Farmington	24,169.83	17.96
629	2311 W. 50th St., Mpls	23,690.20	1,895.69*
122	Kenyon	23,378.37	51[illegible]25*
542	101 W. Summit Ave., St. Paul	23,185.89	628.31*
730	46 27th Ave. S. E., Mpls	22,749.98	338.41*
108	Springfield	22,734.35	1,146.05*
18	3901 W. 3rd St., Duluth	22,705.81	732.39*
538	1817 Selby, St. Paul	22,704.89	1,009.37*
14	5402 E. Superior, Duluth	22,641.89	793.10*
534	918 Selby Ave., St. Paul	21,711.46	787.83*
648	4140 Fremont No., Mpls	21,588.50	1,152.83*
706	1122 26th Ave. No., Mpls	21,164.12	738.66*
604	4553 Bloomington, Mpls	20,955.54	815.01*
689	701 Plymouth No., Mpls	19,940.64	889.83*
676	3460 Minnehaha, Mpls	19,402.27	714.93*
7	6309 Grand Ave., Duluth	18,480.49	925.96*
666	4108 E. Lake St., Mpls	16,907.98	849.88*
668	1319 Lowry Ave., Mpls	15,639.44	1,063.49*
11	801 E. 9th St., Duluth	14,677.85	1,141.16*
681	1901 Nicollet Ave., Mpls	12,457.12	1,284.77*
677	3747 Minnehaha, Mpls	7,046.81	185.13*
200	International Falls	5,944.52	1,412.18*
701	3858 Thomas Ave. No., Mpls	5,420.74	586.64*
660	345 E. Lake, Mpls	3,829.86	176.10*
738	411 Cedar Ave., Mpls	2,999.58	537.80*
201	Thief River Falls	2,533.43	1,120.10*
634	3401 42nd Ave. S., Mpls	2,472.59	182.42*
611	3255 Bruant Ave., Mpls	2,193.81	138.94*
651	4159 Grand Ave., Mpls	1,805.84	524.97*
549	561 St. Peter, St. Paul	1,022.87	418.71*
744	3905 W. 50th St., Mpls	856.79	1,023.58*
9	503 E. 4th St., Duluth	621.49	144.83*
		5,428,978.83	126,470.07*

* Red in copy.

[fols. 1991-2018] PLAINTIFF'S EXHIBIT "W"

UNITED STATES OF AMERICA

Federal Trade Commission

I, Otis B. Johnson, Secretary of the Federal Trade Commission, and official custodian of its records, do hereby certify that attached is a full, true, and complete copy of: Report of the Federal Trade Commission relative to the gross profit and average sales per store of Retail Chain

Stores, transmitted to the President of the Senate February 2, 1933.

In witness whereof, I have hereunto subscribed my name and caused the seal of the Federal Trade Commission to be affixed this 14th day of January, A. D. 1936, at Washington, D. C.

Otis B. Johnson, Secretary. (Seal.)

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(Here follows 2 pasters, side folios—2019-2220-77)

[fol. 2019]

Table 6.—Average Sales Per Store for All Chains Reporting Gross Profits, by Kind of Chain, by Years, 1909–1930

Kind of chain	Year										
	1909	1910	1911	1912	1913	1914	1915	1916	1917	1918	1919
Grocery	$37,565	$38,921	$39,211	$39,632	$38,482	$33,838	$32,157	$33,431	$38,105	$39,614	$42,695
Gro. & Meat	102,235	67,152	61,139	62,309	46,773	44,817	37,201	37,233	44,318	46,018	55,415
Meat											40,080
Confectionery								26,709	41,798	225,050	164,996
Drug	137,806	154,542	148,707	144,180	143,957	150,255	126,084	143,331	132,914	133,197	130,351
Tobacco						18,250	21,568	27,861	33,819	44,020	59,372
Var. ($1 limit)		147,470	106,421	102,965	108,239	107,882	105,099	108,390	111,627	118,546	124,641
Var. ($5 limit)						7,500	8,410	8,450	8,550	9,060	27,095
Var. (unlimited)											19,556
M. r'dy-to-wear	260,716	258,592	261,401	282,571	243,947	234,680	249,874	213,665	174,754	247,410	300,884
W. r'dy-to-wear					63,009	57,565	61,244	147,320	135,175	157,941	218,693
M. & W. r'dy-to-wear	242,502	272,180	270,219	355,433	358,326	394,753	437,473	376,219	135,514	161,354	227,568
M. furnishings									16,960	20,811	52,069
W. accessories		18,250	18,500	19,000	12,000	9,333	9,833	26,535	27,788	24,324	39,700
Hats & caps							31,474	31,850	29,999	32,874	74,538
Millinery				80,325	88,215	105,611	96,988	82,077	80,147	70,739	64,269
M. shoes				40,551	45,406	40,011	43,643	39,775	29,377	50,383	64,834
W. shoes			106,833	140,568	150,019	154,996	173,972				114,323
M. & W. shoes				195,474	230,406	61,712	65,100	80,518	81,639	87,056	129,275
Dry goods									9,581	13,266	38,239
D. G. & apparel					64,324	53,415	56,480	69,983	90,222	105,107	132,931
Dept. store	324,874	319,489	2,097,721	2,912,954	2,825,297	2,727,354	2,284,741	2,959,482	3,051,376	3,473,943	3,139,386
Genl. mdse		25,374	49,400	56,759	60,847	63,716	66,524	70,476	88,275	88,431	103,027
Furniture	62,995	206,961	198,088	201,176	209,489	194,457	205,430	201,754	158,531	194,517	180,739
Mus. inst'm'ts	84,787	132,678	116,682	141,623	122,413	126,357	92,543	121,067	119,460	162,249	183,748
Hardware					51,252	48,705	38,993	61,442	56,476	55,956	90,057
Total	70,403	72,460	99,241	107,852	86,064	79,685	69,254	68,570	67,531	70,784	80,376

[fols. 2020-2077]

Kind of chain	Year										
	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930
Grocery	$55,781	$48,269	$45,326	$44,052	$42,421	$43,262	$43,984	$43,500	$43,493	$43,836	$44,104
Gro. & Meat	64,991	51,338	48,520	46,089	43,299	42,673	45,768	51,701	58,765	62,501	60,231
Meat	61,334	65,236	57,722	58,874	65,644	63,496	64,841	63,856	61,204	74,154	70,534
Confectionery	182,018	80,187	82,470	124,006	105,264	84,354	85,097	75,132	69,393	100,541	91,951
Drug	142,873	128,894	120,671	117,440	118,358	115,447	114,921	112,291	112,827	111,341	100,632
Tobacco	69,849	64,626	61,087	64,061	65,505	66,945	71,793	69,464	65,534	53,128	60,456
Var. ($1 limit)	142,132	142,385	155,139	172,772	180,423	186,993	194,953	191,140	186,890	177,187	156,424
Var. ($5 limit)	33,702	26,599	29,647	31,293	35,947	42,615	41,699	48,856	47,796	38,033	32,401
Var. (unlimited)	.....	49,689	35,172	38,463	37,816	28,475	27,058	39,566	51,349	49,554	37,415
M. r'dy-to-wear	268,077	166,496	200,775	229,186	223,421	210,545	197,019	182,798	167,589	148,172	122,700
W. r'dy-to-wear	192,724	162,267	222,242	178,842	172,088	210,676	165,436	165,860	167,564	180,133	153,997
M. & W. r'dy-to-wear	247,645	196,198	132,703	137,386	125,774	114,420	104,894	94,541	94,089	97,475	77,786
M. furnishings	109,557	92,733	69,140	85,720	76,051	66,248	69,645	58,974	54,607	51,536	41,751
W. accessories	48,347	54,769	46,644	34,484	36,708	46,343	42,323	46,062	46,003	55,452	50,619
Hats & caps	58,037	56,607	52,071	48,347	47,425	49,096	51,892	50,499	44,192	44,187	37,574
Millinery	67,503	67,531	71,393	79,092	67,770	64,920	60,364	59,041	46,679	46,122	39,521
M. shoes	81,664	66,810	85,178	78,223	67,473	68,667	55,867	50,057	49,680	42,465	36,613
W. shoes	123,966	79,761	45,642	105,729	113,827	124,480	114,447	109,547	106,729	115,008	94,625
M. & W. shoes	144,894	112,010	101,264	96,635	86,670	77,833	73,311	70,312	69,107	67,835	57,239
Dry-goods	60,340	49,054	41,638	44,814	39,294	41,860	34,165	40,737	35,029	39,547	31,277
D. G. & apparel	162,933	158,769	151,462	143,429	133,398	133,955	147,500	152,327	149,739	151,571	120,833
Dept. store	3,648,912	2,952,233	2,420,925	3,479,502	3,493,021	3,359,412	2,981,471	2,514,638	1,173,974	1,047,853	802,741
Genl. mdse	109,023	89,203	72,868	80,658	70,312	77,862	67,018	65,168	64,396	108,216	94,202
Furniture	247,073	238,827	226,802	272,167	238,585	263,007	263,246	245,201	254,775	304,152	220,265
Mus. ins'm'ts	186,324	164,560	173,192	188,744	177,056	166,131	172,964	167,987	160,572	147,248	110,093
Hardware	89,115	78,767	70,982	109,788	100,167	98,800	99,861	77,231	69,277	66,741	54,772
Total	92,661	79,811	75,509	75,692	71,987	70,378	71,432	76,076	79,775	88,058	82,269

[fols. 2078-2109] PLAINTIFF'S EXHIBIT "X"

Department of Commerce

Washington, September 4, 1935.

I hereby certify that the annexed is a true copy of the original report entitled, "Census of American Business, Retail Distribution, 1933, Stores and Sales by Size of Business," which is on file in the Bureau of the Census.

W. L. Austin, Director of the Census.
(Official title)

Office of the Secretary

I hereby certify that W. L. Austin, who signed the foregoing certificate, is now, and was at the time of signing, Director of the Census, and that full faith and credit should be given his certificate as such.

In witness whereof, I have hereunto subscribed my name, and caused the seal of the Department of Commerce to be affixed this 4th day of September, one thousand nine hundred and thirty-five.

E. W. Libbey, Acting Assistant Secretary of Commerce. (Seal.)

(Here follows 1 paster, side folios 2110-2137)

[fols. 2110-2137]

Retail Distribution: 1933

Table 4.—State of Minnesota—Number of Stores and Sales, by Size of Store, by Kinds of Business

(Sales are expressed in thousands of dollars)

Kind of Business	Total		Stores with Annual Sales of—																	
			$1,000,000 or more		$500,000 to $999,999		$300,000 to $499,999		$200,000 to $299,999		$100,000 to $199,999		$50,000 to $99,999		$30,000 to $49,999		$20,000 to $29,999		$10,000 to $19,999		Less than $10,000	
	Stores	Sales	Stores	Sales	Stores	Sales	Stores	Sales	Stores	Sales	Stores	Sales	Stores	Sales	Stores	Sales	Stores	Sales	Stores	Sales	Stores	Sales
Total for State[1]	33,879	585,162	16	63,099	36	24,937	60	22,926	85	20,086	401	53,110	1,157	77,663	2,021	75,466	2,611	62,460	7,195	100,877	20,291	82,024
Food group[1]	7,500	122,582			6	5,163	9	3,353	11	2,632	75	9,463	323	22,033	602	22,204	659	15,674	1,578	21,850	4,231	17,756
Candy and confectionery stores	700	4,267	..	.....	..	.....	..	.....	..	.....	2	263	1	70	9	307	24	553	88	1,097	576	1,977
Dairy-products stores (including milk dealers)	313	6,509	..	.....	3	2,615	..	.....	2	513	9	1,209	11	695	8	320	7	166	26	374	247	617
Delicatessen stores	28	246	..	.....	..	.....	..	.....	..	.....	..	.....	..	.....	1	30	1	24	6	87	20	105
Fruit stores and vegetable markets	97	1,409	..	.....	..	.....	..	.....	..	.....	..	.....	6	413	9	362	6	149	19	267	57	218
Grocery stores (with and without meats)	5,137	91,546	..	.....	3	2,548	7	2,563	8	1,889	47	5,966	273	18,791	526	19,409	531	12,707	1,153	16,195	2,589	11,478
Meat markets (including sea foods)	726	10,811	..	.....	..	.....	1	320	..	.....	9	1,010	27	1,787	41	1,499	71	1,681	201	2,706	376	1,808
Bakeries—caterers	412	3,683	..	.....	..	.....	1	470	..	.....	3	369	3	168	2	77	17	348	66	854	320	1,397
Bottled beer and liquor stores	14	121	..	.....	..	.....	..	.....	..	.....	..	.....	..	.....	.....	.....	1	24	5	68	8	29
Other food stores[1]	73	3,990	..	.....	..	.....	..	.....	1	230	5	646	2	109	6	200	1	22	14	202	38	127
Farmers' supplies and country general stores	2,958	51,317	..	.....	..	.....	2	711	4	914	31	3,925	135	8,641	286	10,767	400	9,593	769	10,678	1,331	6,088
Country general stores	2,223	39,025	..	.....	..	.....	..	.....	3	711	18	2,165	91	5,656	224	8,358	347	8,365	663	9,302	877	4,468
Farmers' supply stores	735	12,292	..	.....	..	.....	2	711	1	203	13	1,760	44	2,985	62	2,409	53	1,228	106	1,376	454	1,620
General merchandise group	855	96,870	11	56,418	10	6,328	10	4,159	17	4,029	65	8,799	107	7,541	101	3,988	73	1,782	184	2,562	277	1,264
Department stores	77	71,969	11	56,418	8	4,797	6	2,564	11	2,566	41	5,624	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
General merchandise and dry-goods stores	498	13,952	..	.....	..	.....	1	323	2	430	12	1,613	73	5,039	75	2,955	52	1,271	109	1,533	174	788
Variety, 5-and-10, and to-a-dollar stores	280	10,949	..	.....	2	1,531	3	1,272	4	1,033	12	1,562	34	2,502	26	1,033	21	511	75	1,029	103	476
Apparel group	1,753	41,432	3	4,218	6	4,213	4	1,795	7	1,758	45	5,920	69	4,657	155	5,832	184	4,423	372	5,182	908	3,434
Men's and boys' stores	422	9,805	..	.....	..	.....	1	391	1	290	15	1,991	16	1,139	51	1,905	60	1,445	127	1,853	151	791
Family clothing stores	126	6,149	6	4,213	.....	.....	.....	.....	.....	.....	2	229	1	77	13	456	22	502	33	467	49	205
Women's ready-to-wear specialty stores	329	12,851	3	4,218	..	.....	2	941	3	774	16	2,224	25	1,567	32	1,250	27	659	51	614	170	601
Furriers—fur shops	64	1,879	..	.....	..	.....	..	.....	1	250	2	210	8	596	7	301	9	225	12	184	25	113
Millinery stores	210	1,576	..	.....	..	.....	..	.....	..	.....	2	230	1	94	6	226	8	215	21	305	172	506
Custom tailors	164	1,308	..	.....	..	.....	..	.....	..	.....	..	.....	2	144	10	378	5	117	24	292	123	377
Accessories and other apparel stores	69	589	..	.....	..	.....	..	.....	..	.....	..	.....	1	53	3	113	7	172	10	139	48	112
Shoe stores	369	7,275	..	.....	..	.....	1	460	2	444	8	1,036	15	987	33	1,203	46	1,088	94	1,328	170	729
Automotive group	8,006	108,777	1	1,298	7	4,237	17	6,177	27	6,169	82	11,150	212	14,139	329	12,381	383	9,181	1,708	24,361	5,240	19,684
Motor-vehicle dealers (new and used)	924	44,666	1	1,298	6	3,375	15	5,533	26	5,960	63	8,476	108	7,557	138	5,334	119	2,857	207	3,002	241	1,274
Accessories, tire, and battery dealers	514	7,219	..	.....	..	.....	1	335	1	209	6	848	21	1,338	46	1,759	29	709	68	889	342	1,132
Filling stations	4,230	44,024	..	.....	1	862	1	309	..	.....	10	1,434	65	4,112	112	4,136	192	4,593	1,212	17,446	2,637	11,132
Motorcycle, bicycle, and supply dealers	19	125	..	.....	..	.....	..	.....	..	.....	..	.....	..	.....	1	40	1	25	1	14	16	46
Garages and repair shops	2,305	12,617	..	.....	..	.....	..	.....	..	.....	3	392	17	1,081	32	1,112	42	997	217	2,973	1,994	6,062
Other automotive	14	126	..	.....	..	.....	..	.....	..	.....	..	.....	1	51	.....	.....	.....	.....	3	37	10	38
Furniture and household group	918	16,744	1	1,165	..	.....	5	1,565	3	708	10	1,219	40	2,685	64	2,310	86	2,104	205	2,936	504	2,052
Furniture stores	467	11,415	1	1,165	..	.....	5	1,565	2	460	6	669	24	1,596	44	1,579	59	1,446	136	1,962	190	973
Floor covering, drapery, and upholstery stores	26	422	..	.....	..	.....	..	.....	..	.....	..	.....	3	179	2	69	3	75	5	70	13	29
Household appliance stores	174	2,511	..	.....	..	.....	..	.....	1	248	3	396	7	481	11	401	6	138	30	446	116	401
Other home furnishings and appliance stores	67	738	..	.....	..	.....	..	.....	..	.....	..	.....	4	266	2	81	3	78	10	151	48	162
Radio stores	184	1,658	..	.....	..	.....	..	.....	..	.....	1	154	2	163	5	180	15	367	24	307	137	487
Lumber, building, and hardware group	3,049	49,153	..	.....	..	.....	2	779	3	722	38	5,070	101	6,998	199	7,538	340	8,208	870	12,302	1,496	7,536
Lumber and building-material dealers	991	23,264	..	.....	..	.....	2	779	1	281	27	3,503	64	4,074	112	4,304	156	3,774	328	4,770	301	1,779
Electrical shops (without radios)	96	783	..	.....	..	.....	..	.....	..	.....	..	.....	1	75	2	63	6	145	16	205	71	295
Heating and plumbing shops	328	3,647	..	.....	..	.....	..	.....	1	225	3	449	4	261	7	264	19	473	73	998	221	977
Paint and glass stores	108	1,338	..	.....	..	.....	..	.....	..	.....	2	215	5	341	5	199	4	87	14	213	78	283
Hardware stores	832	10,363	..	.....	..	.....	..	.....	1	216	3	472	11	749	37	1,328	77	1,837	243	3,429	460	2,332
Hardware and farm-implement stores	694	9,758	..	.....	..	.....	..	.....	..	.....	3	431	16	1,498	36	1,380	78	1,892	196	2,687	365	1,870
Restaurant and eating group	5,320	39,482	..	.....	..	.....	1	479	1	267	4	495	51	2,907	115	4,295	186	4,379	789	10,591	4,173	16,069
Restaurants, cafeterias, and lunch rooms	3,496	29,005	..	.....	..	.....	1	479	1	267	3	389	42	2,380	93	3,452	152	3,588	573	7,771	2,631	10,679
Lunch counters, refreshment stands	1,361	7,997	..	.....	..	.....	..	.....	..	.....	1	106	6	328	19	728	27	629	166	2,127	1,142	4,079
Drinking places	463	2,480	..	.....	..	.....	..	.....	..	.....	..	.....	3	199	3	115	7	162	50	693	400	1,311
Other retail stores	3,197	57,099	..	.....	7	4,996	10	3,908	12	2,887	49	6,819	119	8,062	168	6,080	291	6,909	693	10,058	1,848	7,380
Cigar stores and cigar stands	279	3,365	..	.....	..	.....	..	.....	..	.....	2	301	10	638	3	106	24	582	47	867	193	871
Coal and wood yards—ice dealers	490	19,945	..	.....	6	4,348	8	3,129	8	1,940	25	3,318	45	3,170	38	1,417	37	880	61	869	262	874
Drug stores	1,157	19,850	..	.....	..	.....	2	779	2	421	12	1,651	34	2,238	69	2,507	165	3,894	416	6,005	457	2,355
Florists	84	1,085	..	.....	..	.....	..	.....	..	.....	1	197	3	208	3	125	5	107	17	231	55	217
Jewelry stores	449	3,269	..	.....	..	.....	..	.....	..	.....	1	174	7	479	17	581	13	312	36	486	375	1,237
News dealers	51	731	..	.....	..	.....	..	.....	..	.....	1	179	2	112	1	30	5	117	8	146	34	147
Office and store supply, and equipment dealers	88	2,656	..	.....	1	648	..	.....	..	.....	3	408	7	484	9	307	14	349	24	311	30	149
Other classifications	599	6,198	..	.....	..	.....	..	.....	2	526	4	591	11	733	28	1,007	28	668	84	1,143	442	1,530
Second-hand stores	323	1,644	..	.....	..	.....	..	.....	..	.....	2	250	.....	.....	2	71	9	207	27	357	283	761

[1] Totals include data for 6 wholesale establishments with total sales of $2,454,000 not distributed by size classifications. Error discovered too late to adjust totals as previous reports have been issued with these figures.

[fol. 904] RAMSEY COUNTY

No. 126. J. J. Olson, J.

Endorsed—Filed June 16, 1939. Grace Kaercher Davis, Clerk, Minn. Supreme Court.

NATIONAL TEA CO. et al., Respondents,

31948-9 vs.

STATE OF MINNESOTA, Appellant

Syllabus

1. The provisions of the Fourteenth Amendment, §1, of the Federal Constitution, that "No state shall * * * deny to any person within its jurisdiction the equal protection of the laws," and of art. 9, §1, of our constitution that "taxes shall be uniform on the same class of subjects," impose identical restrictions upon the legislative power of the state in respect to classification for purposes of taxation.

2. The power of the state to classify for taxation is of wide range and flexibility, provided always, that the classification be reasonable, not arbitrary. The attempted classification must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis.

3. A gross sales tax which classifies chain store owners for the imposition of a varying rate of taxation solely by reference to the volume of their transactions denies the equal protection provision of the Fourteenth Amendment of the Federal Constitution and is likewise violative of art. 9, §1, of our state constitution.

Affirmed.

[fol. 905] Opinion

JULIUS J. OLSON, Justice:

Two cases are here upon the state's appeals from judgments rendered upon separate findings made by the court in each case. As both cases involve identical questions of law and, to a controlling extent, identical questions of fact,

we shall discuss only the National Tea Company case and shall refer to it as plaintiff and to the state as defendant.

An action was brought by plaintiff pursuant to the provisions of L. 1933, c. 213, as amended by Ex. Sess. L. 1933-1934, c. 16, to recover from defendant certain amounts of "chain store taxes," so-called, paid to the state under protest. There is no question about the procedural remedy having been taken in full compliance with the mentioned act. The legal problem presented is limited to the constitutionality of the chain store tax only insofar as it relates to that portion of the act which sought to impose a gross sales tax graduated according to volume of gross sales, [§2 (b)]. Plaintiff contested both features of the act in the court below. The court held the gross sales portion of the tax to be void, but upheld the specific tax, [§2 (a)]. It also determined the two elements entering into the tax imposed to be severable so that the "specific amount" of the tax [§2 (a)] survived the striking down of the "gross sales" portion thereof. Plaintiff has not appealed, so there is no issue here as to the validity of the "specific" chain store part of the tax. The question is not whether chain store owners may, for taxation purposes, be validly classified separately from single store owners, but whether the imposition of a graduated gross sales tax upon all those engaged in conducting chain stores is discriminatory as between such owners, thus violating the constitutional requirement of uniformity.

[fol. 906] The mentioned act became effective July 1, 1933, and was repealed July 24, 1937, by Ex. Sess. L. 1937, c. 93. That enactment reenacted the specific tax feature, advancing the rates, but omitted that portion relating to gross sales taxes. The present action resulted in judgment for the recovery of the amounts paid for the last six months of 1933 and for the entire year 1934 insofar as payment included taxes based upon gross sales.

Much testimony was taken. The record is voluminous. There are numerous exhibits. Counsel have ably summarized the facts so that our work has been much simplified. Their briefs have gone into every phase of the subject with commendable thoroughness, for all of which they deserve and are gratefully given due credit.

The trial court made extensive findings, amended later on motion. These bespeak careful and conscientious study on its part.

The act selects as the class to be taxed under it the owners of chain retail stores. That classification is not here open to question. The gross sales portion of the act in effect divides chain store merchants into 11 different classes based upon their volume of gross sales and imposes a different rate upon every such class. The different owners are taxed at different rates for performing the same acts, selling the same kind of merchandise and at identical prices. The "gross sales" during the taxable period is the only measure applied.

Plaintiff's stores exist generally throughout the state and are operated in both large and small cities and towns. They are in direct competition with stores in the same line of business operated by other chains, by members of voluntary chains, and by owners of single stores. Generally speaking, plaintiff's stores are found to be competing with all three types of operation. The competing chains are of various sizes as measured by either number of stores or aggregate gross sales. As a consequence these competitors have been subject to and have paid taxes under the act at various rates both as to the specific and gross tax sales features. This finding is especially important:

[fol. 907] "Thus an analysis of the taxes paid by the plaintiff and twenty-two of its principal chain competitors for the year 1934 shows that the gross sales tax average or composite rates paid by the competitors varies from .05 per cent to .85 per cent as compared with the rate of .87 per cent paid by plaintiff. The maximum rates varied from 1/20 of one per cent to one per cent, the latter being the maximum rate paid by plaintiff. * * *

"The gross sales tax is laid as an excise upon individual sales. As each sale is made liability for tax upon that sale arises. Different sales, however, take different rates, though they be of identical articles or merchandise and be made in identical manner. The rate upon any sale depends upon the number and size of sales already made in the current year. The Act therefore taxes different persons at different rates for the privilege of doing the same act, and taxes the same person at different rates for the exercise of the same privilege at different times, depending upon the number of times it has previously been exercised in a given year."

In this state as elsewhere, so the court found,

"there is no constant or uniform relation between volume of gross sales and amount or rate of net profit. There are wide variations in the profit margins as between different kinds of business and different kinds of merchandise; also wide differences in the rate of net profit made by different concerns in the same line of business for any given period; also wide variations in the rate of profit made by the same concern or concerns in any given line of business from year to year and from time to time."

The court concluded that in the light of the foregoing findings (here much abbreviated but we think of controlling importance)—

"the gross sales tax is arbitrary, unreasonable, unequal, and discriminatory, and the classification of chain store systems or concerns according to the volume of their gross sales (resulting from the graduation of the gross sales tax rates) is without relation to the purpose of the Act and without relation to the value of the privilege for which the tax is enacted, and the imposition of the tax, so far as measured by Section 2 (b) of the Act is in violation of Article 9, Section 1," of our constitution, "and in violation of Article XIV, Section 1, of the Amendments to the Constitution of the United States, and is therefore void."

1. Under the Fourteenth Amendment, § 1, of the Federal Constitution, it is provided that, "no state shall * * * deny to any person within its jurisdiction the equal protection of the laws." Art. 9, § 1, of our constitution provides: "Taxes shall be uniform upon the same class of subjects, * * *." In Reed v. Bjornson, 191 Minn. 254, 253 N. W. 102, we held that these provisions of the Federal and State Constitutions impose identical restrictions upon the legislative power of the state in respect to classification for purposes of taxation.

[fol. 908] 2. Our cases hold (and that is the general rule) that the legislature—

"has a wide discretion in classifying property for the purposes of taxation, but the classification must be based on differences which furnish a reasonable ground for making a distinction between the several classes. The differences

must not be so wanting in substance that the classification results in permitting one to escape a burden imposed on another under substantially similar circumstances and conditions. The rule of uniformity, established by the Constitution, requires that all similarly situated shall be treated alike." State v. Minnesota Farmers Mutual Ins. Co. 145 Minn. 231, 234, 176 N. W. 756; State ex rel. Mudeking v. Parr, 109 Minn. 147, 152, 123 N. W. 408; In re Improvement of Third Street, St. Paul, 185 Minn. 170, 240 N. W. 355. So much for our own cases. The Federal Supreme Court has frequently passed upon this phase. Illustrative of the principle is the case of Louisville Gas. Co. v. Coleman, 277 U. S. 32, 37, 72 L. ed. 770, 774, the court there saying:

"In the first place, it may be said generally that the equal protection clause means that the rights of all persons must rest upon the same rule under similar circumstances, * * * and that it applies to the exercise of all the powers of the state which can affect the individual or his property, including the power of taxation. * * * It does not, however, forbid classification; and the power of the state to classify for purposes of taxation is of wide range and flexibility, provided always, that the classification 'must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.' * * * That is to say, *mere difference is not enough: the attempted classification 'must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis.'*" (Italics supplied.)

3. Our act, as we have seen, selects as a class to be taxed the owners of chain retail stores, dividing them into 11 classes and basing the rate of taxation upon the volume of gross sales, a different rate being applied to each class. So the question is, does this classification rest upon any ground having a rational relation to the subject of the enactment? Obviously the tax is not one in the nature of earnings, income, or profits. The element of profit, income, or earnings is not considered in fixing the tax because sales wholly unprofitable or even if entailing a loss are taxed exactly upon the same basis as profitable sales. The only base is the volume of sales, not whether the result is a profit or loss.

[fol. 909] If it were to be considered a tax on sales the same lack of justifying relationship exists since the rate applicable to each sale depends upon the number and size of preceding sales in the taxable year. Nor is it a privilege tax, since the amount of tax bears no relation to the value of the privilege. The different owners are taxed at different rates for performing the same act, the tax being dependent upon the frequency and amount of the various sales during the tax period. Nor do we think it can be justified as a tax upon property sold as there would be wide discrimination with respect to property of the same kind and character under different ownerships. Here as in the case of Stewart Dry Goods Co. v. Lewis, 294 U. S. 550, 556, 79 L. ed. 1054, 1057,

"The statute operates to take as the tax a percentage of each dollar due or paid upon every sale, but increases the percentage if the sale which is the occasion of the tax succeeds the consummation of other sales of a specified aggregate amount."

It is a tax upon gross receipts and as such (294 U. S. 558, 79 L. ed. 1058) "affects each transaction in proportion to its magnitude and irrespective of whether it is profitable or otherwise."

The state contends that the legislative right to classify chain stores separately for the purpose of taxation and to sub-classify them according to their total number has been definitely established by the Federal Supreme Court in four cases as follows: State Board of Tax Commissioners v. Jackson, 283 U. S. 527; Liggett Co. v. Lee, 288 U. S. 517; Fox v. Standard Oil Co. 294 U. S. 87; Great Atlantic and Pacific Tea Co. v. Grosjean, 301 U. S. 412. Counsel say that, "Each of these cases held valid a progressive tax levied on chains in accordance with the number of stores in the chain." Hence, so the argument goes, "the unit of measure is a matter of detail which may be left to the legislature." The trouble with that argument is that as to the first three cases cited, all were decided prior to the Stewart case; and while the Grosjean case was decided later it nowhere appears that the Stewart case was questioned. That opinion is founded upon prior cases holding that the [fol. 910] number of stores in a given chain affords a rational basis for classification for the exaction of progres-

sively higher taxes. As to that phase the court held with the state. It is only that portion of the act which relates to a tax upon gross sales that is involved here. In none of the cases cited and relied upon by the state is that element present as the basis for taxation. The precise question here presented has been directly passed upon adversely to the state's contention in the following five cases: Stewart Dry Goods Co. v. Lewis, 294 U. S. 550, 79 L. ed. 1054; Great Atlantic & Pacific Tea Co. v. Valentine, 12 F. Supp. 760, affirmed per curiam in Valentine v. Great Atlantic & Pacific Tea Co. 299 U. S. 32, 81 L. ed. 22; Ed. Schuster & Co. v. Henry, 218 Wis. 506, 261 N. W. 20; certiorari denied in Henry v. Wadhams Oil Co. 296 U. S. 625, 80 L. ed. 444; Lane Drug Stores, Inc. v. Lee, 11 F. Supp. 672; Great Atlantic & Pacific Tea Co. v. Harvey, 107 Vt. 215, 177 A. 423. The leading case is that of Stewart Dry Goods Co. v. Lewis, supra. Comparing the act there considered with our own we find the two acts so akin in language and purpose as to make them, in substance and effect, identical. There as here classification of merchants for taxation purposes was placed upon the basis of volume of gross sales. The court held the act to be so arbitrary, unequal, and discriminatory as to offend the Federal Constitution and hence was void.

The court in the case of Ed. Schuster & Co. v. Henry, supra, points out the distinctions between the holdings of the supreme court in the Fox v. Standard Oil Co. and other cases and the holding in the Stewart case. On that phase the Wisconsin supreme court said (218 Wis. 506, 514-515, 261 N. W. 21, 23-24):

"Although the classification of chain stores for the imposition of license fees at rates higher than those applicable to single stores, and even fees graduated upward on each store or unit of stores as the total number increased, has been held reasonable because of advantages incidental to the conduct of multiple stores and obvious differences in chain methods of merchandising as contrasted with those practiced in the operation of but one store, [citing the Jackson, Liggett, and Standard Oil Co. cases, supra] it should be noted that, in so concluding in Fox v. Standard Oil Co., supra, the court took into consideration the fact that the [fol. 911] consequences of the graduation in the license fees, then under consideration, between chains differing in the number of units, were not disproportionate to the ben-

efits derived from longer as compared to shorter chains, so as to result in arbitrary discrimination. *It was just in that respect, however, that the court held in the Stewart Case, supra, that the imposition of varying rates of taxation upon the proprietors of stores in the taxable class solely by reference to the volume of their respective transactions, as measured by the gross sales or income derived therefrom, without regard to any reasonable relation between the graduations in the tax and the relative benefits derived by any one of them* by reason of their operating either as part of a larger or a smaller chain, and without any regard to net profits or losses which they had derived from their operations, *was so unreasonable and arbitrary as to render the enactment void.*" (Italics supplied.)

And the opinion points out [261 N. W. 21, 23] that the Fox case was decided January 14, 1935, whereas the Stewart case was decided March 11, 1935.

We think the five cases to which we have referred have so definitely and finally disposed of the legal problem presented as to make it needless for us to analyze or discuss the great number of other tax cases where the same constitutional question was involved. These being the only cases to which our attention has been called directly deciding the question presented we are of opinion that we should follow them and that it is our duty so to do.

Each judgment is therefore affirmed.

Julius J. Olson, J.

Mr. Justice Hilton, being incapacitated by illness, took no part.

Mr. Justice Peterson took no part.

[fol. 912] STATE OF MINNESOTA, SUPREME COURT

31948

NATIONAL TEA COMPANY, Respondent,

vs.

STATE OF MINNESOTA, Appellant,

31949

HAHN DEPARTMENT STORES, INC. (Also Named and Entitled Hahn Department Store, Inc., Allied Stores, Inc., and Allied Stores Corporation-, Respondent,

vs.

STATE OF MINNESOTA, Appellant,

Pursuant to an order of Court heretofore duly made and entered in this cause it is determined and adjudged that the judgments of the Court below, herein appealed from, to-wit, of the District Court within and for the County — Ramsey be and the same hereby is in all things affirmed.

Dated and signed June 27, 1939.

By the Court.

Attest: Grace Kaercher Davis, Clerk.

STATE OF MINNESOTA,
Supreme Court, ss:

I, Grace Kaercher Davis, Clerk of said Supreme Court, do hereby certify that the foregoing is a full and true copy of the Entry of Judgment in the cause therein entitled, as appears from the original remaining of record in my office; that I have carefully compared the within copy with said original and that the same is a correct transcript therefrom.

Witness my hand and seal of said Supreme Court at the Capitol, in the City of St. Paul.

—— ——, Clerk, by —— ——, Deputy.

[fol. 912a] Assignments of Error in the National Tea Company Case

1

The Court erred in granting that portion of plaintiff's motion for an amended decision requesting the Court to strike from the findings of fact the findings set forth in paragraph 2 of the court's findings in its first decision (789-790: 2366-2368) and in failing to make the findings set forth in said paragraph, which are as follows:

"The act was adopted by the legislature for the purpose of raising revenue and also, in the exercise of the police power, for the purpose of curbing the undue expansion of chain stores."

2

The Court erred in granting that portion of plaintiff's motion for an amended decision requesting the Court to strike from the findings of fact the findings set forth in paragraph 11 of the Court's findings in its first decision, (789-790: 2366-2368) and in failing to make said findings of fact, the failure to make the findings of fact set forth in each of the subparagraphs of said paragraph 11 being asigned as a separate and distinct error. Said paragraph 11 reads as follows: (781-782: 2341-2344).

"The development of chain store groups in Minnesota has had many effects injurious to the general welfare, among the most important of which are the following:

[fol. 913] (1) By reason of the advantages of chain stores over independent stores, chain stores throughout Minnesota have gradually been driving independent stores out of business and gradually been taking over a larger and larger portion of the total field of retail sales made within the state.

(2) The development of chain store groups in Minnesota has driven out of business a considerable number of jobbers and wholesale houses within the state and thereby added considerably to unemployment and considerably lessened the value of the taxable property within the state.

(3) It has greatly reduced the number of traveling salesmen and thereby added to unemployment.

(4) It has caused farmers throughout the state to find less ready market for their fruit and vegetable products.

(5) Money has been withdrawn from banks in the villages and smaller cities where chain stores have operated and has been concentrated in the larger cities, thereby weakening the banking structure in rural communities.

A chain store group with a comparatively small number of stores is less injurious to the general welfare in the respects set forth in this paragraph than a chain store group with a large number of stores. The tendency is for the injury to the general welfare to increase with an increase in the number of stores in a chain."

3

The Court erred in making the following findings of fact (78: 232-233) upon motion of the plaintiff: (795:2383-[fol. 914] 2384). (See paragraph 15 of the Court's findings of fact in its amended decision):

"The gross sales tax is laid as an excise upon individual sales. As each sale is made liability for tax upon that sale arises. Different sales, however, take different rates, though they be of identical articles of merchandise and be made in identical manner. The rate upon any sale depends upon the number and size of sales already made in the current year. The Act therefore taxes different persons at different rates for the privilege of doing the same act, and taxes the same person at different rates for the exercise of the same privileges at different times, depending upon the number of times it has previously been exercised in a given year."

4

The Court erred in making the following findings of fact (78-79: 233-235) upon motion of plaintiff: (795-796: 2385-2386). (See paragraph 16 of the findings of fact in the Court's amended decision).

"In Minnesota, as elsewhere, there is no constant or uniform relation between volume of gross sales and amount or rate of net profit. There are wide variations in the profit margins as between different kinds of business and different kinds of merchandise; also wide differences in the rate of net profit made by different concerns in the same

line of business for any given period; also wide variations in the rate of profit made by the same concern or concerns in any given line of business from year to year [fol. 915] and from time to time. A great many factors enter into the result, among which may be mentioned efficiency of management, form of organizations, expenses of operation, competitive conditions, character of community, type of patrons, proportion of high and low profit margin goods sold, and trend of commodity prices."

5

The Court erred in making the following findings of fact (79: 235-236) upon motion of plaintiff: (796: 2388-2389). (See paragraph 17 of the findings of fact in the Court's amended decision).

"In the light of the foregoing findings the gross sales tax is arbitrary, unreasonable, unequal, and discriminatory, and the classification of chain store systems or concerns according to the volume of their gross sales (resulting from the graduation of the gross sales tax rates) is without relation to the purpose of the Act and without relation to the value of the privilege for which the tax is enacted, and the imposition of the tax, so far as measured by Section 2 (b) of the Act is in violation of Article 9, Section 1, of the Constitution of the State of Minnesota, and in violation of Article XVI, Section 1, of the Amendments to the Constitution of the United States, and is therefore void."

6

The Court erred in making the conclusions of law set forth in paragraph 15 of the conclusions of law in its amended decison, which reads as follows: (84-85: 252-253).

[fol. 916] "The gross sales tax feature of said act, that is, the provisions imposing tax as defined and measured by Section 2 (b), is unconstitutional as being in violation of Article 9, Section 1, of the Constitution of the State of Minnesota, and in violation of Article XIV, Section 1, of the Amendments to the Constitution of the United States, and is therefore void."

7

The Court erred in making the conclusions of law set forth in paragraph 16 of the conclusions of law in the

Court's amended decision, which reads as follows: (85: 253-254).

"Plaintiff is entitled to have and recover of the defendant the sum of $70,510.18, together with interest upon the sum of $24,512.67 from January 20, 1934, and upon the sum of $45,997.51 from and since March 3, 1934, all at the rate of six per cent per annum, together with plaintiff's costs and disbursements incurred in this action.

The amount found to be due plaintiff is comprised of the sum of $2,635.00 and $775.00 of specific tax paid by plaintiff in excess of its specific tax liability for the years 1934 and 1935 respectively; and the amounts of $21,877.67 and $45,222.51 gross sales tax paid by the plaintiff for the years 1933 and 1934 respectively.

8

The Court erred in failing to grant defendant's motion at the close of plaintiff's testimony for the dismissal of plaintiff's action on the ground that it had failed to estab- [fol. 917] lish a cause of action against the state or any right to recover against the state. (541: 1619-1621), (770: 2309).

9

The conclusions of law appearing in paragraphs 15 and 16 of the conclusions of law of the amended decision are not justified or supported by the findings of fact. (84-85: 252-254).

10

The judgment appealed from is not justified by the evidence. (86: 256-257).

11

The judgment appealed from is contrary to law.

Assignments of Error in the Allied Stores Corporation Case

1

The Court erred in granting that portion of plaintiff's motion for an amended decision requesting the Court to strike from the findings of fact the findings set forth in paragraph 2 of the Court's findings in its first decision

(821: 2462-2463) and in failing to make the findings set forth in said paragraph, which are as follows: (809: 2426).

"The act was adopted by the legislature for the purpose of raising revenue and also, in the exercise of the police power, for the purpose of curbing the undue expansion of chain stores."

[fol. 918] 2

The Court erred in granting that portion of plaintiff's motion for an amended decision requesting the Court to strike from the findings of fact the findings set forth in paragraph 11 of the Court's findings in its first decision, (821: 2462-2463) and in failing to make said findings of fact, the failure to make the findings of fact set forth in each of the subparagraphs of said paragraph 11 being assigned as a separate and distinct error. Said paragraph 11 reads as follows (814-815: 2440-2443).

"The development of chain store groups in Minnesota has had many effects injurious to the general welfare, among the most important of which are the following:

(1) By reason of the advantages of chain stores over independent stores, chain stores throughout Minnesota have gradually been driving independent stores out of business and gradually been taking over a larger and larger portion of the total field of retail sales made within the state.

(2) The development of chain store groups in Minnesota has driven out of business a considerable number of jobbers and wholesale houses within the state and thereby added considerably to unemployment and considerably lessened the value of the taxable property within the state.

(3) It has greatly reduced the number of traveling salesmen and thereby added to unemployment.

(4) It has caused farmers throughout the state to find a less ready market for their fruit and vegetable products.

[fol. 919] (5). Money has been withdrawn from banks in the villages and smaller cities where chain stores have operated and has been concentrated in the larger cities, thereby weakening the banking structure in rural communities.

A chain store group with a comparatively small number of stores is less injurious to the general welfare in the re-

spects set forth in this paragraph than a chain store group with a large number of stores. The tendency is for the injury to the general welfare to increase with an increase in the number of stores in a chain.

3

The Court erred in making the following findings of fact (145: 434-435) upon motion of plaintiff: (826: 2477-2478).

"The gross sales tax is laid as an excise upon individual sales. As each sale is made liability for the tax upon that sale arises. Different sales, however, take different rates, though they be of identical articles or merchandise and be made in identical manner. The rate upon any sale depends upon the number and size of sales already made in the current year. The Act therefore taxes different persons at different rates for the privilege of doing the same act, and taxes the same person at different rates for the exercise of the same privilege at different times, depending upon the number of times it has previously been exercised in a given year."

[fol. 920]

4

The Court erred in making the following findings of fact (146: 436-437) upon motion of plaintiff (827: 2479-2480). (See paragraph 16 of the findings of fact in the Court's amended decision).

"In Minnesota, as elsewhere, there is no constant or uniform relation between volume of gross sales and amount or rate of net profit. There are wide variations in the profit margins as between different kinds of business and different kinds of merchandise; also wide differences in the rate of net profit made by different concerns in the same line of business for any given period; also wide variations in the rate of profit made by the same concern or concerns in any given line of business from year to year and from time to time."

5

The Court erred in making the following findings of fact (146-147: 437-438) upon motion of plaintiff: (827-828: 2481-2483). (See paragraph 17 of the findings of fact in the Court's amended decision).

"In the light of the foregoing findings the gross sales tax is arbitrary, unreasonable, unequal, and discriminatory, and the classification of chain store systems or concerns according to the volume of their gross sales (resulting from the graduation of the gross sales tax rates) is without relation to the purpose of the Act and without relation to the value of the privilege for which the tax is enacted, and the imposition of the tax, so far as measured by Section 2 (b) of the [fols. 921-922] Act is in violation of Article 9, Section 1, of the Constitution of the State of Minnesota, and in violation of Article XIV, Section 1, of the Amendments to the Constitution of the United States, and is therefore void."

6

The Court erred in making the conclusions of law set forth in paragraph 14 of the conclusions of law in its amended decision, which reads as follows: (151: 453).

"'The gross sales tax feature of said act, that is, the provisions imposing tax as defined and measured by Section 2 (b), is unconstitutional as being in violation of Article 9, Section 1, of the Constitution of the State of Minnesota, and in violation of Article XIV, Section 1, of the Amendments to the Constitution of the United States, and is therefore void."

7

The Court erred in making the following conclusion of law set forth in paragraph 15 of the conclusions of law in the Court's amended decision: (151-152: 453-454).

"The plaintiff is entitled to have and recover of the defendant the sum of $57,812.63, together with interest upon the sum of $16,910.25 from January 22, 1934, and upon the sum of $40,902.38 from January 23, 1935, all at the rate of six per cent per annum, together with plaintiff's costs and disbursements incurred in this action."

[fol. 923] STATE OF MINNESOTA

IN SUPREME COURT.

I, Grace Kaercher Davis, Clerk of said Court, do hereby certify that the foregoing pages numbered from 1 to 935 inclusive, are a true, full and complete transcript of the record and proceedings in the cases:

National Tea Company, Respondent,

vs. 31948

State of Minnesota, Appellant,

and

Hahn Department Stores, Incorporated, (also named and entitled Hahn Department Store, Inc., Allied Stores, Inc., and Allied Stores Corporation), Respondent,

vs. 31949

State of Minnesota, Appellant,

and also of the opinion of the court rendered therein, as the same now appear on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office in the city of St. Paul, Minnesota, this 26 day of October, 1939.

Grace Kaercher Davis, Clerk, by Mae Sherman, Deputy. Seal.

[fol. 924] Supreme Court of the United States

No. —

October Term, 1939

The State of Minnesota, Petitioner,

vs.

National Tea Company

The State of Minnesota, Petitioner,

vs.

Allied Stores Corporation

Order Extending Time Within Which to File Petition for Certiorari

On consideration of the application of counsel for petitioner,

It is Ordered that the time within which petitioner in the above entitled causes may file petition for certiorari be and

same hereby is extended for the period of 27 days from this date.

Hugo L. Black, Associate Justice of the Supreme Court of the United States.

Dated this 20- day of September, 1939.

[fol. 925] SUPREME COURT OF THE UNITED STATES

No. —

October Term, 1939

STATE OF MINNESOTA, Petitioner,

v.

NATIONAL TEA COMPANY

STATE OF MINNESOTA, Petitioner,

v.

ALLIED STORES CORPORATION (formerly Hahn Department Stores, Incorporated)

Order Extending Time Within Which to Apply for Writ of Certiorari

Upon consideration of the application of counsel for the petitioners in the above entitled causes,

It is Ordered that the time within which petitions for writs of certiorari may be filed herein be, and the same is hereby, extended for a period of 20 days from October 17, 1939.

Charles E. Hughes, Chief Justice of the United States.

Dated this 10th day of October, 1939.

[fol. 2163] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

ASSIGNMENT OF ERRORS

The petitioner assigns the following errors in the record and proceedings in these cases:

1

The Supreme Court of Minnesota erred in holding that the gross sales portion of the Minnesota chain store tax is arbitrary, unreasonable, unequal and discriminatory and for that reason in violation of the first section of the Fourteenth Amendment and the uniformity of taxes clause of Section 1 of Article 9 of the Minnesota Constitution.

2

The Supreme Court of Minnesota erred in considering only the revenue aspects of this tax and in failing to consider that this tax was levied also for the police power purpose of restraining the undue expansion of chain stores.

3

The Supreme Court of Minnesota erred in failing to hold that the development of chain store groups in Minnesota has had many effects injurious to the general welfare, among [fol. 2164] which are the following:

(1) By reason of the advantages of chain stores over independent stores, chain stores throughout Minnesota have gradually been driving independent stores out of business and gradually been taking over a larger and larger portion of the total field of retail sales made within the state.

(2) The development of chain store groups in Minnesota has driven out of business a considerable number of jobbers and wholesale houses within the state and thereby added considerably to unemployment and considerably lessened the value of the taxable property within the state.

(3) It has greatly reduced the number of traveling salesmen and thereby added to unemployment.

(4) It has caused farmers throughout the state to find less ready market for their fruit and vegetable products.

(5) Money has been withdrawn from banks in the villages and smaller cities where chain stores have operated and has been concentrated in the larger cities, thereby weakening the banking structure in rural communities.

A chain store group with a comparatively small number of stores is less injurious to the general welfare in the respects set forth in this paragraph than a chain store group with a large number of stores. The tendency is for the injury to the general welfare to increase with an increase in the number of stores in a chain.

4

The Supreme Court of Minnesota erred in failing to hold that the composite chain store tax levied by the Act is an appropriate and valid measure to raise revenue and counteract the social and economic ill effects produced by the undue expansion of chain stores.

5

The Supreme Court erred in holding that the gross sales [fol. 2165] tax is laid as excise upon individual sales, and that the sale of a given quantity of goods by a chain with large gross sales is the same act as the sale of the same quantity of goods by a chain with small gross sales.

6

The Supreme Court of Minnesota erred in holding that the gross sales tax is not a privilege tax.

7

The Supreme Court of Minnesota erred in holding that the amount of the gross sales portion of this chain store tax bears no relation to the value of the privilege granted.

8

The Supreme Court erred in holding that there is no constant or uniform relation between the volume of gross sales and the amount or rate of net profit.

The Supreme Court of Minnesota erred in holding that the classification of chain stores on the basis of volume of gross sales does not rest upon a rational relation to the purposes of the Act.

Wherefore, on account of the errors hereinbefore assigned, appellant prays the Supreme Court of the United States to issue its writ of certiorari herein to the end that the judgments herein of the Supreme Court of the State of Minnesota dated June 27, 1939, may be reviewed by said court.

J. A. A. Burnquist, Attorney General of the State of Minnesota.
Matthias N. Orfield, Special Attorney.
George W. Markham, Special Attorney.
Attorneys for Petitioner, 102 State Capitol, St. Paul, Minnesota.

[fol. 2166] IN SUPREME COURT OF MINNESOTA

[Title omitted]

PRAECIPE FOR TRANSCRIPT OF RECORD—Filed Oct. 26, 1939.

For the purpose of consideration by the Supreme Court of the United States of a petition for writ of certiorari herein, the Clerk of the Supreme Court of Minnesota is hereby requested to prepare and forward to the Supreme Court of the United States the following portions of the record herein:

All those portions of the record set forth in the stipulation with reference to the record hereto attached, and the stipulation waiving cost bond.

J. A. A. Burnquist, Attorney General of the State of Minnesota. Matthias N. Orfield, Special Attorney.

[fol. 2167] IN SUPREME COURT OF MINNESOTA

[Title omitted]

STIPULATION WITH REFERENCE TO THE RECORD—Filed Oct. 26, 1939

It is hereby stipulated and agreed by and between Michael J. Doherty and William Mitchell, counsel in the above entitled matters for National Tea Company and Allied Stores Corporation (formerly Hahn Department Stores, Incorporated), and J. A. A. Burnquist, Attorney General of the

State of Minnesota, and Matthias N. Orfield, counsel in the above entitled matters for the State of Minnesota, that the material contained in the printed record submitted to the Supreme Court of Minnesota in the above entitled matters and in addition the following exhibits not printed in said [fol. 2168] record but now on file in connection with the above entitled matters in the office of the Clerk of the Supreme Court of the State of Minnesota, to-wit:

Plaintiffs' Exhibit A;

From plaintiffs' Exhibit B: the certificate of the Secretary of Commerce; the cover page; that portion of page 6 under the caption, "Types of Operation," commencing with the words, "Types of Operation," and ending with the words "Table 11 B;" the following portion of Table 2 on pages 11, 12, and 13: the table heading reading, "Operating Expenses, by Kinds of Business," and the figures in the two columns entitled, "Number of Stores" and "Total Operating Expenses, per cent to total sales," including said column headings; all of Table 5-A on page 20; and all of Table 6 on page 22;

From Plaintiff's Exhibit C: the certificate of the Secretary of Commerce, the cover page; the first paragraph of the first inside page beginning with the words, "This is one of a series of reports" and ending with the words, "the year 1933;" page 1-A, commencing with the words, "Analyses of the Retail Census for 1933," and ending with the words, "co-operatives, etc." and the first three paragraphs of page 1-B; Table 3 on pages 3 and 4, including the pencil correction of one number on page 3 made by the census department; Table 3 on pages 47 and 48;

From Plaintiffs' Exhibit D: the certificate of the Secretary of Commerce; the cover page; all of the matter on page 30 down to and including the words, "Total, all chains," and the figures in the same line opposite those words; and on page 50 the figures for the State of Minnesota under the heading, "Lumber and Building Material," including the heading of the vertical column reading, "Lumber and [fol. 2169] Building Material (incl. hardware) Stores Sales;" and the figure for Minnesota thereunder and the designation of places in Minnesota under the word "Minnesota" in the left hand column; the first vertical half of page A-5 including the heading, "Retail Distribution: 1933; Table 10—Computation of Operating Expense, by Kinds of Business (Sales, and total reported expense expressed in

thousands of dollars);" the headings of the columns entitled, "Kind of Business" and "United States," and all the matter contained in those columns including the column headed, "With adjustments for small stores, 1933;" all of page A-12; from page A-56, the heading, "Table A—State of Minnesota—Comparison of 39 Principal Kinds of Business, 1933 and 1929. Stores, Sales, Employees, Pay Roll, and Stocks (Sales, pay roll and stocks expressed in thousands of dollars)," the headings of the columns entitled, "Kind of Business," "Number of Stores," "Sales," and the subheadings, "Amount," "1933," and "1929," and all of the matter in said columns under said headings and subheadings;

From Plaintiffs' Exhibit L (in addition to the matter printed in the Record): the certificate of the Secretary of the Federal Trade Commission;

Table 28, page 49;

Table 12, page 78;

Notation: The caption, "Selected Portions of Plaintiff's Exhibit L," at the top of page 85 of the Record is to be stricken from the Record.

From Plaintiffs' Exhibit M: the certificate of the Federal Trade Commission; the cover page; Table 2 on page 9; Table 3 on page 12; that portion of page 14 commencing with the caption, "Estimate of total number of retailers in co-[fol. 2170] operative grocery chains," to the end of the page, except the foot notes; Table 4 on page 15; from Table 5 on pages 16 and 17 the caption and the seven headings given on page 16 and the two headings above them and the figures as to the State of Minnesota given under each of said headings on pages 16 and the eight headings given on page 17 and the two headings above them and the figures as to Minnesota given under each of said headings on page 17; Section 7 at the bottom of page 18 under the caption, "The Independent Grocer's Alliance of America," extending to and including all of pages 19, 20 and 21 except the foot notes on each page; Section 8, being all of pages 22, 23, and 24 on the subject of the Red and White Corporation, excluding foot notes except that portion of foot note (38) on page 22 which specifies as one of the companies the Slocum Bergren Company of Minneapolis and Stone, Ordean-Wells Company of Duluth;

From Plaintiff's Exhibit N: the certificate of the Secretary of Commerce; all of Table 3 on page 73 down to and including the first line beginning with the words, "Per $100

of sales," including the figures in that line opposite those words; all of Table 4 on page 86 entitled, "Operating Expenses—Motor Vehicle Chains," down to and including the first line beginning with the words, "Per $100 of sales," including the figures in the same line opposite those words; all of Table 11 on page 103 entitled, "Operating Expenses—Tire Chains," down to and including the first line beginning with the words, "Per $100 of sales," including the figures in that line opposite those words; Table 4 on page 116; all of Table 5-A on page 127 entitled, "Operating Expenses Classified by Size of Chain—Men's Clothing Chains," down to and including the first line beginning with the words, "Per $100 of Sales," including the figures in that line opposite those [fol. 2171] words; all of Table 5-B on page 127 entitled "Operating Expenses classified by Size of Chain—Men's Clothing and Furnishing Chains," down to and including the first line beginning with the words, "Per $100 of Sales," including the figures in that line opposite those words; all of Table 5-C on page 128, down to and including the first line beginning with the words, "Per $100 of sales," including the figures in that line opposite those words; all of Table 5-E on page 129 entitled, "Operating Expenses Classified by Size of Chains—Tailoring Chains," down to and including the first line beginning with the words, "Per $100 of sales," including the figures in that line opposite those words; the first table on pages 138 and 139, running across the top of both pages, which appears to have no number, but bears the heading, "Stores' Operating Expenses;" all of Table 6, page 155, entitled, "Operating Expenses by Size of City-Shoe Chains," down to and including the first line beginning with the words, "Per $100 of sales," including the figures in that line opposite those words; all of Table 6 on page 226 entitled, "Operating Expenses—Drug Store Chains," down to and including the first line beginning with the words, "Per $100 of sales," including the figures in that line opposite those words; all of Table 3, page 243, entitled, "Operating Expenses B.-Other-Jewelry Chains," down to and including the first line beginning with the words, "Per $100 of sales," including the figures in that line opposite those words; all of Table 4, page 251, entitled, "Operating Expenses—Hardware Chains," down to and including the first line beginning with the words, "Per $100 of sales," including the figures in that line opposite those words; all of Table 17, page 256, entitled, "Operating Expenses—Paint and

Wall-Paper Chains," down to and including the first line [fol. 2172] beginning with the words, "Per $100 of sales," including the figures in that line opposite those words; all of Table 4 on page 266, entitled, "Operating Expenses—Office Appliance Chains," down to and including the first line beginning with the words, "Per $100 of Sales," including the figures in that line opposite those words;

Plaintiff's Exhibit O;

From Plaintiff's Exhibit P: that portion of page 4 beginning, "The classifications or groupings used throughout this report are as follows:" followed by six groups, ending "Group VI;" Table 7 on pages 45 and 46; the caption on page 5 reading, "Departmental Results of Department Stores with Annual Sales of $500,000 to $1,000,000," and under that caption the table on page 7 beginning with the words, "Departments Earning Over 5% of Sales in 1934 (with 1933 Data for Comparison)," down to the end of the table ending with the line, "Miscellaneous House Furnishings—8.5—11.6;" from page 7 the caption reading, "Departmental Results of Department Stores with Annual Sales of $1,000,000 to $2,000,000," and under that caption that portion on page 10 beginning with the words, "Departments Earning Over 5% of Sales in 1934 with 1933 Data for Comparison," down to the end of the table under that caption, ending "Radio—14.1—11.4;" from page 10 the caption, "Departmental Results of Department Stores with Annual Sales of $2,000,000 to $5,000,000," and under that caption the table on page 13 beginning with the words, "Department Earnings Over 5% of Sales in 1934 With 1933 Data for Comparison," down to the end of the table ending with the words, "Tires and Automobile Accessories 13.6—4.8;" from page 13 the caption, "Departmental Results of Department [fol. 2173] Stores With Annual Sales of $5,000,000 to $10,000,000," and under that caption the table on page 15 beginning with the words "Departments Earning Over 5% of sales in 1934 (with 1933 Data for Comparison)," down to the end of the table, ending with the words, "Tires and Automobile Accessories 12.2—0.1;" from page 16 the caption, "Departmental Results of Department Stores With Annual Sales Over $10,000,000," and under that caption the table on page 18 beginning with the words, "Departments With Profits Over 5%," and ending with the words, "Candy—8.0—4.0;" from page 18 the caption, "Departmental Results of Specialty Stores With Annual Sales over $500,000," and

under that caption the table on page 20 beginning with the words, "Departments Showing Earnings Over 4% of Sales in 1934 (With 1933 Data for Comparison)," and ending with the words, "Toys—4.2;" Table 3 on pages 31 and 32;

Plaintiff's Exhibit V;

From Plaintiff's Exhibit W: the certificate of the Secretary of the Federal Trade Commission; and Table 6 on pages 16 and 17;

From Plaintiff's Exhibit X: the certificate of the Secretary of Commerce; and Table 4 on page 16;

The decision of the Supreme Court of the State of Minnesota in the above entitled matters rendered June 16, 1939, and the judgments of the said Court in the above entitled matters entered June 27, 1939, in the office of the Clerk of the Supreme Court of the State of Minnesota;

The assignments of error made by Defendant in each of the above entitled matters in the Supreme Court of the State of Minnesota appearing on pages 47 to 57 inclusive in Appellant's brief in said court;

The assignment of errors submitted with the petition for [fol. 2174] certiorari;

The Praecipe herein and

This stipulation with reference to the record include all that portion of the record in the above entitled matters essential to a consideration by the Supreme Court of the United States of the questions presented by the petition to the said Supreme Court by the State of Minnesota for writ of certiorari in the above entitled matters.

Notation: The number "13," on page 424 of the printed Record, which appears in the fourth line of folio 1271, should be corrected to read, "XIII."

Michael J. Doherty,
William Mitchell, Attorneys for plaintiffs and respondents. E-1006 First National Bank Bldg., St. Paul, Minn.
J. A. A. Burnquist, Attorney General of the State of Minnesota,
Matthias N. Orfield, Special Attorney, Attorneys for defendant and appellant, 102 State Capitol, St. Paul, Minn.

[fol. 2174½] [File endorsement omitted.]

[fol. 2175] [Title omitted.]

Due and personal service of the within praecipe for transcript of record with stipulation with reference to the record

thereto attached is hereby admitted this 27th day of October, 1939.

Michael J. Doherty,
William Mitchell, Attorneys for plaintiffs and respondents, E-1006 First National Bank Building, St. Paul, Minnesota.

[File endorsement omitted.]

[fols. 2176-2177] Clerk's Certificate to foregoing paper omitted in printing.

[fol. 2178] In Supreme Court of Minnesota.

[Title omitted]

STIPULATION WAIVING COST BOND—Filed Oct. 26, 1939

It is hereby stipulated and agreed by and between the Plaintiffs-Respondents and the Defendant-Appellant herein, through their respective counsel, that the bond to cover the costs under application for writ of certiorari herein be dispensed with and said bond is hereby waived.

Dated this 25th day of October, 1939.

Michael J. Doherty,
William Mitchell, Attorneys for Plaintiffs-Respondents.
J. A. A. Burnquist, Attorney General,
Matthias N. Orfield, Attorneys for Defendant-Appellant.

[fol. 2179] [File endorsement omitted.]

[fol. 2180] Supreme Court of the United States.

ORDER ALLOWING CERTIORARI—Filed Dec. 11, 1939

The petition herein for a writ of certiorari to the Supreme Court of the State of Minnesota is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on Cover: Enter Matthias N. Orfield. File No. 43,907, Minnesota Supreme Court, Term No. 500, State of Minnesota, Petitioner, vs. National Tea Company and Allied Stores Corporation (Formerly Hahn Department Stores, Incorporated). Petition for a writ of certiorari and exhibit thereto. Filed November 3, 1939. Term No. 500 O. T. 1939.

(5795)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 500

STATE OF MINNESOTA,

Petitioner,

vs.

NATIONAL TEA COMPANY AND ALLIED STORES CORPORATION (FORMERLY HAHN DEPARTMENT STORES, INCORPORATED).

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA AND BRIEF IN SUPPORT THEREOF.

J. A. A. BURNQUIST,
Attorney General of the State of Minnesota.
MATTHIAS N. ORFIELD,
Special Attorney,
GEORGE W. MARKHAM,
Special Attorney.
Counsel for Petitioner.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 500

STATE OF MINNESOTA,

Petitioner;

vs.

NATIONAL TEA COMPANY AND ALLIED STORES CORPORATION (FORMERLY HAHN DEPARTMENT STORES, INCORPORATED).

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MINNESOTA.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, the State of Minnesota, by its counsel, respectfully shows:

Summary Statement of the Matter Involved.

The National Tea Company, a foreign corporation conducting business in Minnesota by the system of chain stores, commenced an action in the District Court of Ramsey County, Minnesota, to recover from the State of Minnesota the sum of $118,740.08 and interest thereon (R. 60)

on account of chain store taxes paid under the Chain Store Tax Act.

The Allied Stores Corporation (at the time of the commencement of the action known as Hahn Department Stores, Incorporated), another chain store corporation conducting business in Minnesota, commenced an action in the same court to recover from said State the sum of $57,827.63, and interest thereon, on account of chain store taxes paid under the Act (R. 129).

The two cases involving identical questions of law and, to a very great extent, identical questions of fact, were consolidated and tried together before said district court and presented together on appeal to the State Supreme Court.

In each case the plaintiff asserted that the Act was invalid on the ground that it violated Section 1 of the Fourteenth Amendment to the Constitution of the United States and also several provisions of the State Constitution (R. 6-7; 93-94). The alleged violations of the State Constitution will be shown hereafter to be immaterial in determining whether this court has jurisdiction.

The Act levies a composite occupational tax consisting of two portions, provided for respectively in Sections 2(a) and 2(b), one based on the number of stores in the chain and one based on the total gross sales made by the chain. Each plaintiff brought action to recover both portions of the tax paid.

Section 2(a) of the Act levies a tax of $5 on each store in a chain in excess of one and not in excess of ten, the tax increasing group by group to a maximum of $155 for each store in excess of fifty. Section 2(b) of the Act levies a tax measured by gross sales of 1/20 per cent on the portion of gross sales not in excess of $100,000, this rate increasing in eleven steps to one per cent on that portion of gross sales in excess of $1,000,000.

The District Court rendered its decisions holding that part of the law valid which levied that portion of the tax based on the number of stores in the chain and holding invalid that portion of the tax based on total gross sales. On motion of plaintiff (R. 789 and 821) the first decisions were amended (R. 63-65, 133-152), the amended decisions altering certain findings of fact and certain conclusions of law. Judgment was entered for plaintiff in each case (R. 86, 152) and an appeal taken by the State to the Supreme Court of Minnesota (R. 87, 153). The two cases were argued together before the Supreme Court of Minnesota. That court rendered its decision upholding the judgments of the lower court and final judgments were entered for plaintiffs on June 27, 1939.

The statutory provision believed to sustain the jurisdiction of the Supreme Court of the United States to review by writ of certiorari the judgments of the Supreme Court of the State of Minnesota is Section 237(b) of the Judicial Code, as amended, United States Code Annotated, Title 28, Section 344(b), which provides:

> "It shall be competent for the Supreme Court, by certiorari, to require that there be certified to it for review and determination, with the same authority and with like effect as if brought up by writ of error, any cause wherein a final judgment or decree has been rendered or passed by the highest court of a State in which a decision could be had * * * where is drawn in question the validity of a statute of any State on the ground of its being repugnant to the Constitution * * * of the United States; * * * and the power to review under this paragraph may be exercised as well where the Federal claim is sustained as where it is denied."

The statute of the State of Minnesota the validity of which is involved is Chapter 213 of the Session Laws of

the State of Minnesota, 1933 (pp. 265-272), as amended by Chapter 16 of the Extra Session Laws of Minnesota, 1933-1934 (pp. 19-21), which statute as amended appears in Mason's Minnesota Statutes, 1936 Supplement, as sections 5887-1 to 5887-18 inclusive (pp. 638-641). This statute and the amendment thereto are set forth in the appendix hereto as Exhibit A. This statute as amended will be referred to in this petition as "the Act."

The date of the judgment sought to be reviewed is June 27, 1939.

The date upon which the application for writ of certiorari is presented is November 3, 1939.

The time for making application for certiorari herein was on September 21, 1939, extended to and including October 17, 1939, by order of Mr. Justice Black, and on October 10, 1939, extended to and including November 6, 1939, by order of Mr. Chief Justice Hughes.

The Validity of a Statute of a State on the Ground of Its Being Repugnant to the Federal Constitution is Involved in These Cases.

The Supreme Court of Minnesota, the highest court of that State, held the Chain Store Tax Act invalid on the ground that it violates Section 1 of the Fourteenth Amendment. (See Minnesota Supreme Court's opinion, 286 N. W. 360, 362.) This brings the case within the provisions of the Judicial Code, Section 237 (b) as amended, 28 United States Code Annotated, Section 344 (b), which is quoted above.

In paragraphs III and XVIII of plaintiff's complaint in the *National Tea Company* case (R. 7 and 31) and in paragraphs III and XV of plaintiff's complaint in the *Allied Stores Corporation* case (R. 93-94 and 105) plaintiff alleges that the act is in violation of the following portion of Article XIV, Section 1, of the Amendments to the Constitution of the United States:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

These allegations are denied in paragraphs III and XVIII of defendant's answer in the *National Tea Company* case (R. 49, 53) and in paragraphs III and XV of defendant's answer in the *Allied Stores Corporation* case (R. 123, 126).

When all testimony on both sides had been presented, defendant moved that the actions of plaintiffs and of each of them be dismissed on the ground that the evidence presented had not substantiated a cause of action. The motion was denied and an exception was noted by defendant (R. 770).

The State District Court made findings that the imposition of the gross sales portion of the tax provided by Section 2 (b) of the act is "in violation of Article XIV, Section 1, of the Amendments to the Constitution of the United States." (*National Tea* case, Finding 17, R. 79) (*Allied Stores* case, Finding 17, R. 146-147).

The making of this finding was assigned as Error No. 5 in defendant's brief in the Supreme Court of Minnesota (R. 915).

The State District Court made a Conclusion of Law to the effect that the gross sales feature of the Act, as set forth in Section 2 (b) is unconstitutional as being "in violation of Article XIV, Section 1, of the Amendments to the Constitution of the United States." (*National Tea* case, Conclusion of Law 15, R. 84-85) (*Allied Stores* case, Conclusion of Law 14, R. 151). The making of this conclusion of law was assigned as Error No. 6 in defendant's brief in the Supreme Court of Minnesota (R. 915). In its decision in these cases, 286 N. W. 360 (R. 904), the Supreme Court of Minnesota held the gross sales portion of the tax invalid on the ground

that it is in violation of Article XIV, Section 1, of the Constitution of the United States and also in violation of a provision of the State constitution imposing identical restrictions. That the Minnesota Court held the restrictions imposed by the two constitutions to be identical is shown by the following quotation from the court's decision, 286 N. W. 362:

> "Under U. S. Const. Amend. XIV, S. 1, it is provided that, 'No state shall * * * deny to any person within its jurisdiction the equal protection of the laws.' Minn. Const. art. 9, S. 1, provides: 'Taxes shall be uniform upon the same class of subjects, * * *.' In Reed v. Bjornson, 191 Minn. 254, 253 N. W. 102, we held that *these provisions of the Federal and State Constitutions impose identical restrictions upon the legislative power of the state in respect to classification for purposes of taxation.*" (Italics ours.)

The Minnesota Supreme Court makes it clear that it considered itself in duty bound to follow the decisions of the Supreme Court of the United States holding similar progressive gross sales taxes invalid because in violation of Article XIV, Section 1, of the Amendments to the United States Constitution. It cites in support of its decision five cases, two of them cases in this Court, in each of which a progressive gross sales tax was held invalid because in violation of the first section of the Fourteenth Amendment and in each of which invalidity of an act because in violation of the first section of the Fourteenth Amendment was the controlling question, 286 N. W. 360, 363. After discussing these five cases the court says, p. 364 (R. 911):

> "We think the five cases to which we have referred have so definitely and finally disposed of the legal problem presented as to make it needless for us to analyze or discuss the great number of other tax cases where the same constitutional question was involved. *These being the only cases to which our attention has been called*

directly deciding the question presented, we are of the opinion that we should follow them and that it is our duty so to do." (Italics ours.)

The Questions Presented.

The main question presented is whether an act dividing chain stores into groups based on the amount of their aggregate sales, and levying on them a portion of an occupational tax increasing group by group according to the amount of their sales, is arbitrary and unreasonable and therefore in violation of Section 1 of the Fourteenth Amendment.

The several questions presented are stated in the assignments of errors in the two cases, which are identical and are as follows:

Assignment of Error in the Two Cases.

1.

The Supreme Court of Minnesota erred in holding that the gross sales portion of the Minnesota chain store tax is arbitrary, unreasonable, unequal and discriminatory and for that reason in violation of the first section of the Fourteenth Amendment and the uniformity of taxes clause of Section 1 of Article 9 of the Minnesota Constitution.

2.

The Supreme Court of Minnesota erred in considering only the revenue aspects of this tax and in failing to consider that this tax was levied also for the police power purpose of restraining the undue expansion of chain stores.

3.

The Supreme Court of Minnesota erred in failing to hold that the development of chain store groups in Minnesota

has had many effects injurious to the general welfare, among which are the following:

(1) By reason of the advantages of chain stores over independent stores, chain stores throughout Minnesota have gradually been driving independent stores out of business and gradually been taking over a larger and larger portion of the total field of retail sales made within the State.

(2) The development of chain store groups in Minnesota has driven out of business a considerable number of jobbers and wholesale houses within the State and thereby added considerably to unemployment and considerably lessened the value of the taxable property within the State.

(3) It has greatly reduced the number of traveling salesmen and thereby added to unemployment.

(4) It has caused farmers throughout the State to find less ready market for their fruit and vegetable products.

(5) Money has been withdrawn from banks in the villages and smaller cities where chain stores have operated and has been concentrated in the larger cities, thereby weakening the banking structure in rural communities.

A chain store group with a comparatively small number of stores is less injurious to the general welfare in the respects set forth in this paragraph than a chain store group with a large number of stores. The tendency is for the injury to the general welfare to increase with an increase in the number of stores in a chain.

4.

The Supreme Court of Minnesota erred in failing to hold that the composite chain store tax levied by the Act is an appropriate and valid measure to raise revenue and coun-

teract the social and economic ill effects produced by the undue expansion of chain stores.

5.

The Supreme Court erred in holding that the gross sales tax is laid as an excise upon individual sales, and that the sale of a given quantity of goods by a chain with large gross sales is the same act as the sale of the same quantity of goods by a chain with small gross sales.

6.

The Supreme Court of Minnesota erred in holding that the gross sales tax is not a privilege tax.

7.

The Supreme Court of Minnesota erred in holding that the amount of the gross sales portion of this chain store tax bears no relation to the value of the privilege granted.

8.

The Supreme Court erred in holding that there is no constant or uniform relation between the volume of gross sales and the amount or rate of net profit.

9.

The Supreme Court of Minnesota erred in holding that the classification of chain stores on the basis of volume of gross sales does not rest upon a rational relation to the purposes of the Act.

Opinions of the Courts Below.

The trial court rendered no opinions in these cases. Its final findings of fact and conclusions of law appear in the record at pages 63-85 and 133-152.

The opinion of the Supreme Court of the State of Minnesota appears at pages 904-911 of the record filed herewith. It is reported in 286 N. W. 360-364. The Minnesota report which will contain this decision has not been printed.

Reasons Relied on for the Allowance of the Writ.

The Question Presented Is a Question of Substance.

The question presented in this case is a question of substance. Not only are the immediate amounts involved large, $88,357.12 in the *National Tea* case (R. 86) and $72,346.61 in the *Allied Stores* case (R. 153), but the State must refund more than $600,000 in taxes and will be denied the right to collect over $800,000 in taxes in case the application for this writ is denied. It is, however, not only the State of Minnesota that is interested. More than twenty States have passed chain store tax laws. Other States are likely to do so. All of the States potentially are interested in a definite determination by the Court of the issue involved in the present case.

The Supreme Court of Minnesota Erred in Considering Only the Revenue Aspects of This Tax and in Failing to Consider That This Tax Was Levied Also for the Police Power Purpose of Restraining the Undue Expansion of Chain Stores.

The question whether the Act was passed for a police power purpose is a clear cut issue in the present cases. The absence of a police power purpose was alleged in plaintiffs' complaints (R. 4, 5, 91) and denied in defendant's answers (R. 48-49, 122-123). In its first findings of fact (in finding No. 2) the District Court found as follows:

> "The act was adopted by the legislature for the purpose of raising revenue and also, in the exercise of the police power, for the purpose of curbing the undue expansion of chain stores."

This finding is in accordance with the fact of common knowledge that the act was passed in the exercise of the police power to restrict the undue expansion of chain stores, as well as to raise revenue. It is supported by much uncontroverted evidence showing that chain stores are injurious to the general welfare. We refer especially to undisputed evidence showing:

Injuries to independent competitors (R. 551-552),

Destruction of jobbing houses (R. 562),

Increased unemployment of traveling salesmen (R. 562).

In its first finding of fact (in finding No. 11) the State District Court found as follows with reference to injuries caused by chain stores (R. 781-782, 814-815):

> "The development of chain store groups in Minnesota has had many effects injurious to the general welfare, among the most important of which are the following:
>
> (1) By reason of the advantages of chain stores over independent stores, chain stores throughout Minnesota have gradually been driving independent stores out of business and gradually been taking over a larger and larger portion of the total field of retail sales made within the state.
>
> (2) The development of chain store groups in Minnesota has driven out of business a considerable number of jobbers and wholesale houses within the state and thereby added considerably to unemployment and considerably lessened the value of the taxable property within the state.
>
> (3) It has greatly reduced the number of traveling salesmen and thereby added to unemployment.
>
> (4) It has caused farmers throughout the state to find a less ready market for their fruit and vegetable products.
>
> (5) Money has been withdrawn from banks in the villages and smaller cities where chain stores have

operated and has been concentrated in the larger cities, thereby weakening the banking structure in rural communities.

A chain store group with a comparatively small number of stores is less injurious to the general welfare in the respects set forth in this paragraph than a chain store group with a large number of stores. The tendency is for the injury to the general welfare to increase with an increase in the number of stores in a chain."

This finding that the act was passed for a police power purpose is likewise supported by that portion of the State District Court's ultimate findings, which states that chain store organizations have many substantial advantages over independent retailers. In so finding the District Court found in effect that chain store organizations possess the power to injure competitors and thereby to bring about the evil economic and social effects which the evidence showed.

Moreover, the State District Court in its ultimate findings definitely found injuries to competitors caused by chain stores, as follows (R. 73, 141):

"In the past prior to the passing of the unfair trade practices act in Minnesota in 1937 chain stores have injured competitors and extended their own business by the use of loss leaders."

Notwithstanding these facts the State District Court, upon motions of plaintiffs (R. 789, 821), struck its first finding No. 2 and substituted therefor a finding as follows (R. 68, 137):

"The act is essentially a revenue measure."

This action of the State District Court was assigned as Error No. 1 in the State's brief in the Supreme Court of Minnesota (R. 913).

The making of this finding and the failure to make the earlier finding that the Act was passed for the purpose of

raising revenue and to curb the undue expansion of chain stores was error for the following reasons:

1. It was a matter of common knowledge that the Act was passed in part to curb the undue expansion of chain stores.

2. The undisputed evidence showed that substantial injuries are caused by chain stores to weaker competitors, to jobbers and to traveling salesmen.

3. The District Court in its ultimate findings found that chain stores, by the use of loss leaders, have injured competitors. That finding indicates that there was a police power purpose in the passing of the Act.

4. The State District Court in its ultimate findings declared that chain stores have many substantial advantages over independent competitors in their methods of merchandising. When taken in connection with the ultimate finding that chain stores injure competitors, this finding indicates that the legislature in passing the Act might properly seek to equalize these disadvantages between these competing groups.

The State District Court upon motion of plaintiffs (R. 789-790, 821-822) likewise struck from its findings of fact its first finding No. 11 and substituted nothing therefor (R. 64-81, 132-148). This action of the State District Court was assigned as error No. 2 in the State's brief in the Supreme Court of Minnesota (R. 913).

The propriety of considering police power purposes in passing upon the validity of a tax measure was forcefully stated by this Court in the last chain store tax case, the *Grosjean* case, where this Court says (pp. 425-426):

> "Our decision need not, however, rest on conceptions of subject, measure and rate of tax. Much broader considerations touching the state's internal policy of police sustain the exaction."

The burden rests upon plaintiffs to show that there were no police power purposes in the passing of the Act. As was said by this Court in the case of *Borden's Farm Products Co.* v. *Baldwin*, 293 U. S. 194, 209:

> "When the classification made by the legislature is called in question, if any state of facts reasonably can be conceived that would sustain it, there is a presumption of the existence of that state of facts, and one who assails the classification must carry the burden of showing by a resort to common knowledge or other matters which may be judicially noticed, or to other legitimate proof, that the action is arbitrary."

In the present cases we need not rely upon uncertain conjecture in our search for facts to sustain a finding that the Act was passed for police power purposes. The District Court's ultimate findings of chain store advantages points toward that conclusion. The District Court's ultimate findings of injuries caused by chain stores points to that conclusion.

When plaintiffs in their complaint tendered the issue as to whether the Act was passed for police power purposes they assumed the burden of proving that fact. This burden has not been sustained. Plaintiff presented no evidence showing that the legislature was not actuated by police power purposes in passing the Act.

This Court Is Asked to Reconsider Its Decision in the Case of Valentine v. *Great Atlantic and Pacific Tea Company.*

During the past eight years the question of the validity of progressive taxation of chain stores on the basis of size, size being measured by the number of stores in the chain, has come before this Court four times, namely, in the following cases:

State Board of Tax Commissioners v. *Jackson*, 283 U. S. 527, 51 S. Ct. 540, 75 L. Ed. 1248;

Liggett Co. v. *Lee*, 288 U. S. 517, 53 S. Ct. 481, 77 L. Ed. 780;

Fox v. *Standard Oil Co.*, 294 U. S. 87, 55 S. Ct. 333, 79 L. Ed. 780;
Valentine v. *Great Atlantic & Pacific Tea Company*, 299 U. S. 32, 57 S. Ct. 772, 81 L. Ed. 1193.

In each of these cases this Court upheld the validity of such a tax on the ground that the larger chains in point of number of stores possesses advantages over the smaller chains justifying classification and the imposition of a progressively higher tax as the number of units increases.

In 1936 in the Iowa chain store tax case, *Valentine* v. *Great Atlantic and Pacific Tea Co., supra,* hereafter referred to as the *Valentine* case, in a per curiam opinion from which Mr. Justice Brandeis and Mr. Justice Cardozo dissented and in which Mr. Justice Stone took no part, this Court considered and held invalid the progressive gross sales portion of the Iowa chain store tax, a tax very similar to the corresponding portion of the Minnesota tax. We contend that there is no difference in principle between classifying chain store organizations for taxation on the basis of the number of stores in the chain and classifying such stores for taxation on the basis of gross sales. Each is related to size and to the greater chain store advantage which greater size gives. Each is related to size and to the greater power to injure weaker competitors which greater size gives.

In the *Valentine* case, *supra,* this Court gives the following as its explanation for holding the gross sales portion of the Iowa chain store tax invalid (p. 33):

> "The decree is affirmed upon the authority of Stewart Dry Goods Co. *v.* Lewis, 294 U. S. 550."

We respectfully contend that this Court's decision in the *Stewart* case should not have ruled its decision in the *Valentine* case, and should not rule its decision in the present cases. Involved in the *Stewart* case was the validity of a progressive sales tax levied on substantially all retailers.

The tax was in no sense a chain store tax. Absent in the *Stewart* case but present in the *Valentine* case was the factor of the advantages of the chain store method of merchandising. Absent, therefore, in the *Stewart* case, was the power to uphold the classification on the ground that the chains with the larger gross sales possess greater chain store advantages than the chains with the smaller gross sales. The decision shows that this Court recognized that the classification presented in that case was not a chain store classification.

The Decision in the Valentine Case Unduly Restricts Legislatures in Their Choice of Means in Taxing Chain Stores.

The decision in the *Valentine* case, *supra*, unduly restricts State legislatures in their choice of means in taxing chain stores. The plaintiff in one of these two cases, Allied Stores Corporation, has larger gross sales in Minnesota than any other chain store organization—nearly $10,000,000 per year. Under the composite tax the gross sales portion of which was held invalid by the Minnesota District and Supreme Courts it paid a tax for the year 1934 of $40,907.38. But, as it has only two stores in Minnesota (although a large number in other States) the specific portion of that tax was only $5 (R. 847). Moreover, it would have been an utter impossibility to levy on this chain a tax of any considerable amount based on the number of stores without at the same time making that tax totally destructive to the chains with comparatively small sales per store. Such a composite tax is not arbitrary. It seems far more arbitrary to limit the tax to the specific tax with the result that Allied Stores, with nearly $10,000,000 in annual gross sales, pays a $5 tax, whereas National Tea Co., with annual gross sales of only a little more than $5,000,000, but with 155 stores, must pay $18,520, which is 3704 times as much (R. 847).

This Court is Asked to Reconsider Its Decision in the Stewart Case if It Shall Deem That Decision Pertinent to the Present Case.

In our opinion the Minnesota Act can be upheld without overruling the decision in the case of *Stewart Dry Goods Co.* v. *Lewis*, 294 U. S. 550, 55 S. Ct. 525, 79 L. Ed. 1054, hereafter referred to as the *Stewart* case. This Court, however, has said in the *Valentine* case that a gross sales tax on chain stores is invalid and referred to the *Stewart* case for authority. We, therefore, respectfully ask this Court to reconsider its decision in the *Stewart* case if it shall deem that decision pertinent to the present case. That decision was concurred in by only six judges, Mr. Justice Brandeis, Mr. Justice Stone and Mr. Justice Cardozo dissenting.

The Kentucky law under attack imposed a progressive gross sales tax on substantially all retail merchants. The majority opinion holds that tax invalid on the ground that there is no constant relation between greater sales and greater profit, and therefore no constant relation between greater sales and greater capacity to pay (R. 557-558). In his dissent, in which he argues that the tax was valid, Mr. Justice Cardozo takes the position that there "is a relation of correspondence between capacity to pay and the amount of business done" (R. 570). He points out that there is excellent authority for the conclusion that sales on a large scale are accompanied by differences of method with attendant advantages that are matters of common knowledge. He also points out that the Harvard Bureau of Business Research is authority for the conclusion that large scale merchandising enjoys not only an increment of profit expressed in terms of dollars but also an increment of profit when expressed as a percentage (R. 573-574). It is apparent that these differences between large and small scale merchandising offer a sound basis for classification and the imposition of a progressive sales tax.

The Decision of the Minnesota Supreme Court is Not in Harmony with Controlling Decisions of This Court.

There is no difference in principle between a progressive tax on chain store organizations based on the number of stores and a progressive tax on chain store organizations based on gross sales. The case of *Great Atlantic and Pacific Tea Co.* v. *Grosjean*, 301 U. S. 412, is the last chain store tax case decided by this Court. In that case this Court held valid a progressive chain store tax based on the number of stores in the chain and thereby upheld again and for the fourth time the proposition that classification of chain store organizations on the basis of size, and taxation on a progressive basis, is not arbitrary. This Court strongly emphasized the fact that the decision does not rest merely on conceptions of subject, measure and rate of tax, but on the State's police power to "forbid, as inimical to the public welfare, the prosecution of a particular type of business," and to regulate it "in such a manner as to abate evils deemed to arise from its pursuit."

The findings of fact in the present cases show, and if they did not, this Court would take judicial notice of the fact, that chain store organizations have many advantages in merchandising over independent stores and have injured competitors by unfair methods of doing business (R. 71 to 73; 139-142, 867-888). The Legislature of Minnesota has found a practicable way of reaching and curbing the undue expansion of all chain stores by means of a composite tax which reaches alike the chain that is large and powerful by reason of large gross sales, even though the number of its stores may be small, and the chain that is large and powerful by reason of its great number of stores. The power to curb for the general welfare the undue expansion of all chains is properly comprehended within the State's police power. It cannot properly be abridged by judicial decision.

The decision in the *Valentine* case is at variance with the decision of this Court in the case of *Pacific American Fisheries* v. *Alaska*, 269 U. S. 269, 46 S. Ct. 110, 70 L. Ed. 270. The Legislature of Alaska levied a progressive tax on fish canneries canning certain kinds of fish, graduated upward according to the amount of the pack. This Court held the tax not a violation of the due process clause of the Fifth Amendment. There can be no difference in principle between a progressive tax on the canning of cases of fish, canned for sale, and a progressive tax on gross sales.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the Supreme Court of the State of Minnesota, commanding that court to certify and send to this Court, for its review and determination, a full and complete transcript of the record, and all proceedings of the said Supreme Court had in the cases numbered and entitled on its docket, Nos. 31948-31949, National Tea Company *v.* State of Minnesota, Allied Stores Corporation *v.* State of Minnesota, to the end that the decision and judgments of said Supreme Court may be reviewed and reversed by this Honorable Court and that judgments may be entered for the State of Minnesota.

STATE OF MINNESOTA,
By J. A. A. BURNQUIST,
Attorney General of the State of Minnesota;
MATTHIAS N. ORFIELD,
Special Attorney;
GEORGE W. MARKHAM,
Special Attorney,
Attorneys for Petitioner,
102 *State Capitol,*
St. Paul, Minnesota.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 500

STATE OF MINNESOTA,

Petitioner,

vs.

NATIONAL TEA COMPANY AND ALLIED STORES CORPORATION (FORMERLY HAHN DEPARTMENT STORES, INCORPORATED),

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BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Statement of the Case.

The facts of the two cases are stated adequately in the Petition for Certiorari.

ARGUMENT.

POINT I.

The controlling question in this case is a Federal question, the State question being so interwoven with the Federal question as not to be an independent matter.

It will be conceded that the State court held the gross sales portion of this chain store tax invalid on the ground

that it violates the "equal protection" clause of the Fourteenth Amendment. It may be contended, however, that while these cases were decided on that ground they were also decided on the ground that the gross sales portion of the tax violates that portion of section 1 of article 9 of the State Constitution reading: "Taxes shall be uniform upon the same class of subjects." Interpreting this clause the Supreme Court of Minnesota has said that "equality of protection includes uniformity of application to the subject of taxation and that our uniformity clause is not more restrictive than the equal protection clause of the Fourteenth Amendment."

This Court has held in a long line of decisions that "where the record discloses that judgment of a State court was based, not alone upon a ground involving a Federal question, but also upon another and *independent* ground, broad enough to maintain the judgment, this court will not take jurisdiction to review such judgment" (Italics ours). *Doyle v. Atwell*, 261 U. S. 590, 592. In case after case, however, this Court has pointed out that to prevent jurisdiction, the State ground must be an independent ground. *Doyle v. Atwell, supra*, p. 592; *Enterprise Irrigation District v. Canal Company*, 243 U. S. 57, 164; *Nickel v. Cole*, 256 U. S. 222, 225; *Fox Film Corporation v. Muller*, 296 U. S. 207, 210.

This Court has also held that "where the non-federal ground is so interwoven with the other as not to be an independent matter" the Court's jurisdiction is plain. *Enterprise Irrigation District v. Farmers Mutual Canal Co.*, 243 U. S. 157, 164. The point of all these cases is that to prevent jurisdiction the State matter decided must be independent of the Federal matter. A case exactly parallel with the present case on this point is *Morehead v. N. Y. ex rel. Tipaldo*, 298 U. S. 587, 603, where, (as stated by this Court, p. 603,) the Court of Appeals of New York held the minimum

wage act of that State repugnant to the due process clauses of the State and Federal Constitution." The fact that the New York court held the Act invalid because in violation of the due process clause of the State Constitution did not prevent this Court from taking jurisdiction on application for certiorari. It is true that in that case the New York court certified that the Federal constitutional question was present and necessarily passed on. But when the record is clear, as it is in the present case, it speaks for itself. We should note that in the present cases the opinion of the Minnesota court shows as clearly as any certification could that the Federal constitutional question was present, necessarily passed upon, and controlling, first, by stating definitely that the equal protection clause of the Fourteenth Amendment and the uniformity of taxes clause of the State constitution impose "identical restrictions upon the legislative power of the State in respect to classification for purposes of taxation," 286 N. W. 362; secondly, by referring to five cases, (p. 363) each of which involved the validity of a progressive gross sales tax under the first section of the Fourteenth Amendment, and then saying in conclusion (p. 364):

> "We think the five cases to which we have referred have so definitely and finally disposed of the legal problem presented as to make it needless for us to analyze or discuss the great number of other tax cases where the same constitutional question was involved. These being the only cases to which we have been referred directly deciding the question presented, we are of the opinion that we should follow them and it is our duty so to do."

The question presented and decided in every one of these cases was the question whether a progressive gross sales tax violates the equal protection clause of the Fourteenth

Amendment and this question was either the sole question or the controlling question in every case. That this is so is shown by the following quotations:

Stewart Dry Goods Co. v. *Lewis, supra*, p. 554:

> "The appellants charge that the statute violates several sections of the constitution of Kentucky and several provisions of the Federal Constitution. We shall not stop to enumerate these, since we must sustain the claim that the classification made by S. 2 denies the appellants the equal protection of the laws assured by the Fourteenth Amendment."

Valentine v. *Great Atlantic and Pacific Tea Co., supra*, p. 33:

> "The District Court, composed of three judges, held that the provision of S. 4 (b) of the statute, imposing a tax based on gross receipts from sales according to an accumulative graduated scale, was invalid under the equal protection clause of the Fourteenth Amendment of the Constitution of the United States as creating an arbitrary discrimination. * * *"
>
> "The decree is affirmed upon authority of Stewart Dry Goods Co. *v.* Lewis, 294 U. S. 550."

Ed. Shuster & Co., Inc. v. *Henry*, 261 N. W. 20, 22:

> "Because of the absence of that essential reasonable relation in the respects stated, the tax imposed under section 76.75 (3), Stats., is arbitrary and discriminatory, under the decision in the Stewart case, and therefore section 76.75, Stats., is in violation of the Fourteenth Amendment, U. S. Const., and void."

Lane Drug Stores v. *Lee*, 11 F. Supp. 672, 673:

> "It is unnecessary to discuss subdivision B of section 4 of the act, because the decision in Stewart Dry Goods Co. *v.* Lewis, * * * fully sustains the contention of plaintiffs that subdivision B of section 4 of the act is

> so arbitrary, unreasonable, and discriminatory that it denies to these plaintiffs equal protection of the law guaranteed by the Fourteenth Amendment of the United States Constitution."

Great Atlantic and Pacific Tea Co. v. *Harvey*, 107 Vt. 215, 177 A. 423:

> "The decision (in the Stewart case) is controlling in the instant case. The Supreme Court of the United States is the ultimate authority upon questions arising under the Federal Constitution. * * * If the Kentucky statute offends the Fourteenth Amendment, so does the one in issue before us." 177 A. 427.

The foregoing quotations from the five cases on which the Supreme Court of Minnesota relies makes it clear that the legal problem which it considered was the validity of a gross sales tax under the equality clause of the Fourteenth Amendment. Accordingly, when the State court says in its final paragraph, 286 N. W. 364, that these five cases have disposed of the legal question, it refers to the question as to the invalidity of the gross sales tax under the Fourteenth Amendment. The court says in effect that this Federal question was the controlling question in the case.

The State question presented in the present cases is clearly not independent of the Federal question. By the Minnesota Court's own statement, the equal protection clause of the Federal Constitution and the uniformity of taxes clause of the State Constitution "impose identical restrictions upon the legislative power of the State in respect to classification for purposes of taxation." In such a case it necessarily follows that the State court has but one decision to make, namely, whether the act is valid under both constitutions or invalid under both constitutions. Accordingly, this Court having held the Iowa tax on gross sales of chain stores invalid in the *Valentine* case, on authority of the *Stewart* case, the Minnesota Court could make no independent decision as

to the validity of the Minnesota tax on gross sales of chain stores, except to decide whether said tax and the Kentucky gross sales tax on gross sales of all retail stores were so similar as to be subject to the same objections as to their validity. The Minnesota Court found "the two acts so akin in language and purpose as to make them, in substance and effect, identical," 286 N. W. 362. This decision made, the Minnesota Court was in duty bound to follow the decision of this Court in the *Stewart* case and the *Valentine* case and hold the gross sales portion of the Minnesota tax invalid under the equal protection clause of the Fourteenth Amendment and, necessarily, the two being identical in restrictive effect for purposes of taxation, under the uniformity of taxes clause of the State Constitution. From this it follows that in the present cases the State question was not an independent question, but was controlled by this Court's earlier decision on the identical Federal question. The hands of the Supreme Court of Minnesota were tied by decisions of this Court which we respectfully contend are incorrect.

POINT II.

The Supreme Court of Minnesota erred in considering only the revenue aspects of this tax and in failing to consider that this tax was levied also for the police power purpose of restraining the undue expansion of chain stores.

This point has been adequately presented in the Petition for Certiorari.

POINT III.

This Court is asked to reconsider its decision in the case of Valentine v. Great Atlantic and Pacific Tea Company.

From 1931 to 1937, five cases involving the validity of progressive chain store tax laws have come before this Court for decision. These cases are the following:

State Board of Tax Commissioners v. *Jackson*, 283 U. S. 527, 51 S. Ct. 540, 75 L. Ed. 1248;

Liggett Co. v. *Lee*, 288 U. S. 517, 53 S. Ct. 481, 77 L. Ed. 929;

Fox v. *Standard Oil Co.*, 294 U. S. 87, 55 S. Ct. 333, 79 L. Ed. 780;

Valentine v. *Great Atlantic & Pacific Tea Company*, 299 U. S. 32; 57 S. Ct. 56, 81 L. Ed. 22;

Great Atlantic & Pacific Tea Co. v. *Grosjean*, 301 U. S. 412, 57 S. Ct. 772, 81 L. Ed. 1193.

For brevity these cases will be referred to respectively as the *Jackson* case, the *Liggett* case, the *Fox* case, the *Valentine* case and the *Grosjean* case. In four of these cases the tax was a progressive tax based on the number of stores in the chain. Such a tax was upheld on the ground that increased chain store advantages resulting from adding stores to the chain justify subclassification and a progressively higher tax on larger chains.

In the fifth case, the *Valentine* case, *supra;* which involved a progressive tax on chains measured by gross sales, very similar to the Minnesota tax, the tax was held invalid on authority of *Stewart Dry Goods Co.* v. *Lewis*, 294 U. S. 550. We respectfully contend that this decision was unsound for the following reasons:

1. The decision in the *Stewart* case was not pertinent to the facts of the *Valentine* case.

In the *Valentine* case the court passed upon the validity of a progressive tax on chain stores, measured by gross sales. In the *Stewart* case the court considered a progressive tax on substantially all retail sales whether made by chain stores or independent retailers. Consequently, important considerations of increased chain store advantage resulting from increased size were present in the *Valentine* case and could properly be used as a basis for classification,

but were not present in the *Stewart* case. Therefore, the holding of this Court in the *Stewart* case was not applicable to the *Valentine* case.

In rendering its decision in the *Stewart* case, the court took pains to point out that the tax involved was not a chain store tax. The court said (pp. 555-556):

> "The tax is not confined to a particular method of merchandising. All retailers, individual and corporate, selling every description of commodities, in whatever form their enterprises are conducted, make up the taxable class."

Later in the opinion, after referring to the three chain store tax cases then decided, the court said (p. 565):

> "The instant case presents a classification of quite a different kind. The Kentucky statute ignores the form of organization and the method of conducting business. The taxable class is retail merchants, whether individuals, partnerships or corporation; those who sell in one store or many; those who offer but one sort of goods and those who through departments deal in many forms of merchandise."

2. There is no difference in principle between a progressive tax on chain stores based on size, size being measured by the number of stores in the chain, and a progressive tax on chain stores based on size, size being measured by total gross sales.

In its findings of fact in each of the present cases (R. 71-73; 139-142) the District Court found that chains enjoy sixteen advantages over independent stores in their methods of doing business.

It found that chains buy in larger quantities and therefore secure larger quantity discounts. It is conceded that this advantage increases with an increase in the number of stores in the chain. But it is apparent that this advantage

increases as much with the addition of two stores with gross sales of $50,000 each as with the addition of ten stores with gross sales of $10,000 each. In other words, we do not know how great are the buying advantages of a given chain when we are told only the number of stores. We must also be told the average sales of each store. We must be given both the multiplier and the multiplicand. Greater gross sales mean greater buying power and greater quantity discounts. This surely is a consideration which the taxing power may take account of in levying its tax, as was done by the Minnesota legislature in levying this tax.

The Minnesota District Court found that the chain store groups receive substantial special rebates and advertising allowances not granted to independents, which increase with increases in the size of the chain.

This Court's opinion in the *Grosjean* case, *supra*, (p. 421), points out that the Great Atlantic and Pacific Tea Company received in one year more than $8,000,000 in secret rebates, advertising allowances and brokerage fees—more than $500.00 for each of its 15,000 stores. The evidence in the present case shows that the National Tea Company received large special and secret rebates by reason of large scale purchases (R. 867, 868, 870, 873-888). The court found that this is true generally of chain stores (R. 71, 140).

It is apparent that the great purchasing power which commands increasingly great special rebates is equally valuable whether it results from a great number of chain stores in one organization or from enormous sales from a few chain stores. It is therefore not arbitrary for the tax-levying authority to take note of this fact and levy a tax which reaches both classes of chains.

It seems unnecessary to pursue this line of argument through all the many chain store advantages. It is sufficiently clear that to accomplish the purposes of chain store

taxation, namely, to produce revenue and to restrict the undue expansion of chain stores, we need, and in fact must have, two measuring rods, the number of stores in the chain and total gross sales per chain.

The argument becomes still clearer when we note that this Court, in its decision in the last chain store tax case, the *Grosjean* case, *supra*, definitely recognizes that a progressive chain store tax may rest upon broader considerations than the rate of tax. This Court says:

> "Our decision need not, however, rest on conceptions of subject, measure and rate of tax. Much broader considerations touching the state's internal policy of police sustain the exaction. * * * In the exercise of its police power the state may forbid, as inimical to the public welfare, the prosecution of a particular type of business, or regulate a business in such manner as to abate evils deemed to arise from its pursuit. * * *
>
> "If, in the interest of the people of the state, the legislature deemed it necessary either to mitigate evils of competition as between single stores and chains or to neutralize disadvantages of small chains in their competition with larger ones, or to discourage merchandising within the state by chains grown so large as to become a menace to the general welfare, it was at liberty to regulate the matter directly or to resort to the type of taxation evidenced by the Act of 1934 as a means of regulation."

3. The decision in the *Valentine* case unduly restricts legislatures in their choice of means in taxing chain stores.

In raising revenue and in restricting the undue expansion of chain stores the legislature is equally interested in reaching the chain that has great chain store advantages and correspondingly great power to destroy competition by reason of its large number of stores and the chain that has such advantages and such power by reason of enormous sales from a few stores. Montgomery Ward & Co., with

total sales in Minnesota in 1934 of $6,777,204 from sixteen stores, paid a specific tax of $135, a nominal amount having no appreciably restrictive effect. Nor could any tax based on the number of stores have produced much revenue or had a substantially restrictive effect on such a chain, with average annual sales per store of more than $400,000, without destroying the average chain with average annual sales per store of about $40,000. On the other hand, the gross sales tax of $29,138.12 on this company was substantial (Original Exhibit A, p. 4).

J. C. Penney Co., with 62 stores and with gross sales in Minnesota in 1934 of $7,040,243, paid a specific tax of $4,105 and a gross sales tax of $60,130.62, a total tax of $64,235.62. (Original Exhibit A, p. 5.) If Minnesota must restrict its chain store tax to the specific tax on stores, its tax on Montgomery Ward, with sales of nearly $7,000,000, becomes only $135, whereas its tax on the Penney Co., with sales not far from the same, will be $4,105, or thirty times as much. On the other hand, if the composite tax is upheld, the Ward and the Penney taxes will be respectively $29,273.12 and $64,245.62.

It seems clear that there is a closer correspondence between the amounts of the composite taxes on these two chains and their respective chain store advantages than between the amounts of the specific taxes on these chains and their respective chain store advantages. It seems equally clear that there is a closer correspondence between the amounts of the composite taxes on these two chains and their respective power to injure competitors than between the amounts of the specific taxes on these chains and their power to injure competitors. Yet this Court (in the *Valentine* case) and the Minnesota courts (in these cases) declare the composite tax to be arbitrary and the specific tax to be unobjectionable. We cannot understand how a court can properly strike down as arbitrary a tax which in actual

operation proves to approach more nearly the ideal of absolute fairness and uphold as valid a similar tax which falls farther short of reaching that ideal.

It is a matter of common knowledge that chains have become so numerous and so large as to be a menace to successful merchandising by independents. This Court, in the *Grosjean* case, holds that a State by taxation may "discourage merchandising within the state by chains grown so large as to become a menace to the general welfare." Such discouragement, as to chains with enormous sales but few stores within the State, such as Allied Stores Corporation, cannot be effected by a progressive tax on stores. Levy a tax of $5,000 per store on Allied Stores Corporation with two stores in Minnesota and annual sales of nearly $10,000,000, and it will be nominal in its restrictive effect, but it would destroy every chain with average sales per store.

Point IV.

This Court is asked to reconsider its decision in the case of Stewart Dry Goods Co. v. Lewis if it shall deem the decision in that case pertinent to the facts of the present case.

This Court has held in the *Valentine* case that a progressive tax on chain stores based on total gross sales is not distinguishable in principle from a progressive tax on all stores, whether chain stores or independent, based on total gross sales. The latter tax was held invalid in the case of *Stewart Dry Goods Co.* v. *Lewis*, 294 U. S. 550, hereafter called the *Stewart* case. We have pointed out under Point II that there are substantial reasons for distinguishing the two cases. However, if this Court is of the opinion that the two kinds of taxes are not distinguishable in principle it becomes material in this argument to point out the reasons why this Court's decision in the *Stewart* case should be reconsidered.

That decision was rendered by a divided court, Mr. Justice Brandeis, Mr. Justice Stone, and Mr. Justice Cardozo dissenting.

The Kentucky law under attack in the *Stewart* case imposed a progressive gross sales tax on substantially all retailers. That act was held to be in violation of the equal protection clause of the Fourteenth Amendment because, in the opinion of the Court, classification for taxation on the basis of gross sales is not based on a reasonable relationship between the amount of the tax and the privilege taxed.

Mr. Justice Cardozo, speaking for the dissenting justices, takes the position that there is a reasonable relationship between the amount of business done and capacity to pay. In his view there is an intelligible economic theory underlying the progressively heavy incidence of the tax, namely, that there is a minimum size for business units below which efficiency is less on the average than expansion would make it; that there are intermediate levels within which efficiency is subject to progressive development; and that there are ultimate levels beyond which efficiency, if promoted, goes forward more slowly (p. 567).

The social theory underlying the tax, is that the little man, because of inferior capacity to pay, should bear the lighter burden (p. 567).

He very cogently points out (p. 579) that in prior chain store tax cases classification ran athwart the lines of profit, yet was sustained.

We believe a progressive tax on gross sales is sustainable for the following reasons:

1. There is a reasonable relationship between the amount of a progressive sales tax and capacity to pay.

2. There is generally an increase in the amount of profit with an increase in gross sales, and this is sufficient to sustain the tax.

3. Practical considerations make it necessary to accept approximate correspondence between the amount of taxes and capacity to pay.

POINT V.

The decision of the Supreme Court of Minnesota in the present cases is not in harmony with the decisions of this Court.

The decision of the Supreme Court of Minnesota is contrary in principle to four of the five chain store tax decisions of this Court. The only chain store tax decision of this Court which may be deemed to support the Minnesota Court is the decision in the *Valentine* case, *supra*. That decision held invalid a progressive tax on chain stores measured by gross sales, a tax similar to the Minnesota tax. But the decision in the *Grosjean* case is subsequent to the decision in the *Valentine* case. It follows that if we are correct in our contention that there is no difference in principle between a progressive tax on chain stores measured by the number of stores in the chain and a progressive tax on chain stores measured by gross sales, the *Grosjean* case tacitly overruies the *Valentine* case and upholds the validity of the Minnesota tax.

If the state can levy a progressive tax on chains based on size, using number of stores as the yardstick, it can levy a progressive tax on chains based on size, using gross sales as the yardstick, and it can levy a progressive tax on chains using both as the combined yardstick. This must be so unless there are unfair and arbitrary qualities in gross sales as a measure of chain store advantages and chain store power to cause injury to the general welfare not found in

number of stores as a measure. The most casual examination of the evidence in these cases will show that the combined yardstick, number of stores and gross sales, used in the Minnesota tax, bears a much closer relation to chain store advantages and chain store power to cause social and economic injuries, than does the single yardstick, number of stores.

We give below the amount of gross sales, the number of stores, the amount of the specific taxes, and the amount of the combined taxes of the two plaintiffs for the year 1934 (Original Exhibit A, pp. 3 and 5):

	Gross Sales.	No. of Stores.	Specific Tax.	Composite Tax.
Allied Stores Corporation.....	$9,714,374	2	$5	$10,907.38
National Tea Company.....	$5,288,845	154	$18,520	$63,742.51

These figures speak for themselves. The specific taxes of the Allied Stores Corporation compares with the specific taxes of National Tea Company as 1 to 3704, the composite tax, approximately, as 40 to 63. National Tea Company, with annual gross sales of a little over $5,000,000 cannot enjoy chain store advantages or chain store power to cause social and economic injuries 3704 times as great as Allied Stores Corporation, with annual sales of nearly $10,000,000. But the proportion of 63 to 40 is presumably approximately accurate.

An examination of the tax levy on more than 300 chains which operate in Minnesota, as shown by Original Exhibit A, will show that in every case the composite tax which the Minnesota courts condemn as arbitrary operates more equitably than the specific tax which they uphold.

This Court, in the *Grosjean* case, the last chain store tax case passed upon by this Court held valid a progressive specific tax on chain stores based on the number of stores in the chain. That is the case which should govern the decision of the Supreme Court of Minnesota. There being no

difference in principle between a progressive tax based on number of stores and a progressive tax based on both the number of stores and gross sales, unless the addition of the gross sales portion makes the composite tax more arbitrary than the specific tax, it follows that this Court, in upholding the progressive tax on the chain stores of Louisiana, based on the number of stores, in effect upheld the composite tax of Minnesota, unless there are arbitrary features in the composite tax not present in the specific tax. But an examination of the composite tax of Minnesota shows conclusively that the composite tax approaches much closer to the ideal of absolute fairness than does the specific tax standing alone.

The emphasis placed by this Court in the *Grosjean* case upon police power considerations shows that the decision in the present case is not in harmony with the decision of this Court in the *Grosjean* case. In the latter case this Court Court says (p. 425):

> "Our decision need not, however, rest on conceptions of subject, measure and rate of tax. Much broader considerations touching the state's internal policy of police sustain the exaction * * *. Taxation may be made the implement of the exercise of the state's police power; * * *.
>
> "If in the interest of the people of the state, the legislature deemed it necessary * * * to neutralize the disadvantages of small chains in their competition with large ones, or to discourage merchandising by chains grown so large as to become a menace to the general welfare, it was at liberty to regulate the matter directly or to resort to the type of taxation evidenced by the Act of 1934 as a means of regulation."

It is evident that if the Louisiana legislature, in the exercise of the State's police power, may discourage the growth of chains grown so large in number of stores as to become a menace to the general welfare, the Minnesota legislature

in the exercise of the police power of Minnesota, may discourage the growth of chains grown so large in gross sales as to become a menace to the general welfare by threatening to destroy the business of tens of thousands of independent merchants.

Point VI.

There is a reasonable relationship between this tax and the purposes of the Act.

It is a matter of common knowledge that the Minnesota chain store tax was levied for a dual purpose. The title of the act refers to it as "An act raising revenues, imposing a tax on conducting business by the system of chain stores." Implicit in the selection of chain stores for the imposition of a heavy tax from which all independent stores are free is the police power purpose of restricting the undue expansion of chain stores. The progressive rates make that purpose clearer.

The one objection made by the Supreme Court of Minnesota to a progressive chain store tax measured by gross sales is the absence of a close relationship between the amount of the tax and the net profit resulting from gross sales. The absence of such a relationship was not proved. Furthermore, we contend that in levying a chain store tax for the dual purpose of raising revenue and curbing the undue expansion of chain stores there need not be a close relationship between the amount of the tax and the amount of net profit. In fact, if the correspondence between the amount of the gross sales tax and the amount of net profit is close, the act can have but little effect in restraining the undue expansion of chain stores. It is only when the tax begins to cut severely into profit that the restraining influence becomes effective.

What we must have in order to satisfy the requirements of "equal protection" is a reasonable relationship between

the progressive rate of the tax and the dual purpose of the act. Clearly we have that relationship in the Minnesota Act. The gross sales tax on chains with small sales (less than $100,000 per year), and therefore small chain store advantages and little power to injure competitors, is very light, 1/20 of one per cent. This steps up gradually, as chain store advantages and power to injure competitors increase with increased gross sales, to one per cent for that portion of gross sales above $1,000,000. (Sec. 2 b of the Act.)

We must remember that the gross sales portion of this tax is not based on net income, but is based, exactly as is the specific portion, on the fact that chain store advantages and chain store capacity for injuring competitors, increase with size. There is no exact correspondence between the amount of a progressive chain store tax measured by the number of stores and the amount of net income. Every year there are many chains that make no profit. During depression periods a considerable portion of the chains make no profit. Yet this Court has not held that to be a valid objection to the constitutionality of a progressive tax based on the number of stores in a chain. It follows that the gross sales portion of the Minnesota tax should not be held invalid although there is no exact correspondence between this portion of the tax and net income.

The propriety of taxing chain stores in such a way as to restrict profit has been recognized by this Court. In the case of *Fox* v. *Standard Oil Co.*, *supra*, this Court says (p. 100):

> "A chain, as we have seen, is a distinctive business species, with its own capacities and functions. Broadly speaking its opportunities and powers become greater with the number of component links; and the greater they become, the more far-reaching are the consequences, both social and economic. For that reason the state may tax the large chains more heavily than the small ones, and upon a graduated basis, * * *. Not

only may it do this, but it may make the tax so heavy as to discourage the multiplication of units to an extent believed to be inordinate, and by the incidence of the burden develop other forms of industry."

We have heretofore quoted this Court's opinion in the *Grosjean* case to the same effect.

Summary of Argument.

I.

The controlling question in this case is a Federal question, the State question being so interwoven with the Federal question as not to be an independent matter.

II.

The Supreme Court of Minnesota erred in considering only the revenue aspects of this tax and in failing to consider that this tax was levied also for the police power purpose of restraining the undue expansion of chain stores.

III.

This Court is asked to reconsider its decision in the case of *Valentine* v. *Great Atlantic and Pacific Tea Company.*

IV.

This Court is asked to reconsider its decision in the case of *Stewart Dry Goods Co.* v. *Lewis,* if it shall deem the decision in that case pertinent to the facts of the present case.

V.

The decision of the Supreme Court of Minnesota in the present case is not in harmony with the decisions of this Court.

VI.

There is a reasonable relationship between this tax and the purposes of the act.

For the foregoing reasons we respectfully submit that this Court should grant a writ of certiorari to review the final judgments herein of the Supreme Court of Minnesota.

Respectfully submitted,

J. A. A. BURNQUIST,
Attorney General of the State of Minnesota;
MATTHIAS N. ORFIELD,
Special Attorney;
GEORGE W. MARKHAM,
Special Attorney,
Counsel for Petitioners,
102 State Capitol,
St. Paul, Minnesota.

EXHIBIT A.

CHAPTER 213.

Session Laws of the State of Minnesota passed during the Forty-Eighth Session of the State Legislature at the Session Commencing January 3, 1933.

An act raising revenues, imposing a tax on conducting business by the system of chain stores for selling or otherwise disposing of goods, wares, articles or commodities at retail, with certain exceptions providing for the assessment and collection thereof, and for the distribution of the proceeds therefrom, providing penalties for failure to pay such tax, defining certain crimes in connection with the enforcement of such tax, and appropriating money for the administration of this Act.

Be it enacted by the Legislature of the State of Minnesota:

SECTION 1. Definitions.—(a) The term "person", when used in this Act, shall include individuals, partnerships, trusts, associations, joint stock companies, corporations, and firms however organized or whatever be the plan of operation.

(b) There is hereby imposed upon every person engaged within the State of Minnesota in conducting a business by the system of chain stores from any of which are sold or otherwise disposed of at retail any goods, wares or merchandise, excepting any person selling at retail one or more of the following—fuel, lumber, building material, gasoline and oils, and grain, if the gross sales of any such person from such produce or products shall, during any year for which the tax is imposed, equal or exceed 95 per centum of the total gross sales from all sources of any such person, and excepting cooperative associations organized under the laws of this State in good faith and not for the purpose or with the intent of evading the tax hereby imposed, an annual tax for each calendar year during any part of which such taxpayers shall be so engaged, which tax shall be computed as hereinafter provided for.

SEC. 2. Rate of Tax.—The tax imposed by Section 1 shall be equal to the sum of the amount due under the provisions of subdivision (a) and the amount due under the provisions of subdivision (b) of this section 2, as follows:

(a) A specific amount to be determined as follows:

(1) $5.00 for each store in excess of one and not in excess of 10 if said business is conducted at not in excess of 10 stores or mercantile establishments within this state under a single or common ownership, supervision or management.

(2) $15.00 for each store in excess of 10 and not in excess of 20 if said business is conducted at in excess of 10 but not in excess of 20 stores or mercantile establishments within this state under a single or common ownership, supervision or management.

(3) $35.00 for each store in excess of 20 and not in excess of 30 if said business is conducted at in excess of 20 but not in excess of 30 stores or mercantile establishments within this state under a single or common ownership, supervision or management.

(4) $65.00 for each store in excess of 30 and not in excess of 40 if said business is conducted at in excess of 30 but not in excess of 40 stores or mercantile establishments within this state under a single or common ownership, supervision or management.

(5) $105.00 for each store in excess of 40 and not in excess of 50 if said business is conducted at in excess of 40 but not in excess of 50 stores, or mercantile establishments within this state under a single or common ownership, supervision or management.

(6) $155.00 for each store in excess of 50 if said business is conducted at in excess of 50 stores or mercantile establishments within this state under a single or common ownership, supervision or management.

(b) An amount based on the combined gross sales in excess of the exemption set forth in Section 4, of said business at all stores or mercantile establishments within this state under a single or common ownership, supervision or man-

agement, but which shall be computed by applying the following rates to the specified portions of such entire or combined gross sales in excess of said exemption.

(1) 1/20th of one per cent on that portion of the gross sales not in excess of $100,000.00.

(2) 2/20ths of one per cent on that portion of the gross sales in excess of $100,000.00 but not in excess of $200,000.00.

(3) 3/20ths of one per cent on that portion of the gross sales in excess of $200,000.00 and not in excess of $300,000.00.

(4) 4/20ths of one per cent on that portion of the gross sales in excess of $300,000.00 and not in excess of $400,000.00.

(5) 5/20ths of one per cent on that portion of the gross sales in excess of $400,000.00 and not in excess of $500,000.00.

(6) 6/20ths of one per cent on that portion of the gross sales in excess of $500,000.00 and not in excess of $600,000.00.

(7) 8/20ths of one per cent on that portion of the gross sales in excess of $600,000.00 and not in excess of $700,000.00.

(8) 10/20ths of one per cent on that portion of the gross sales in excess of $700,000.00 and not in excess of $800,000.00.

(9) 12/20ths of one per cent on that portion of the gross sales in excess of $800,000.00 and not in excess of $900,000.00.

(10) 15/20ths of one per cent on that portion of the gross sales in excess of $900,000.00 and not in excess of $1,000,000.00.

(11) One per cent on that portion of the gross sales in excess of $1,000,000.00.

SEC. 3. Definitions.—The terms "store" and "mercantile establishment" shall mean any fixed place at which said

business is conducted even if said place is at the same time being used for other purposes. Conducting a business by the system of Chain Stores shall mean conducting such business from two or more stores under a single or common ownership, supervision or management. Two or more stores or mercantile establishments shall, for the purposes of this Act, be treated as being under a single or common ownership, supervision or management if directly or indirectly owned or controlled by a single person or any group of persons having a common interest in such stores or mercantile establishments, or if any part of the gross revenues, net revenues, or profits from any such stores or mercantile establishments shall directly or indirectly be required to be immediately or ultimately made available for the beneficial uses, or shall directly or indirectly inure to the immediate or ultimate benefit, of any single person or any group of persons having a common interest therein.

SEC. 4. What are gross sales.—The term "gross sales" shall mean the money value of the consideration received or receivable by the vendor or transferror from the vendee or transferee from every retail sale or transfer made in connection with the business upon which the tax levied by Section 1 is imposed, excepting gross sales of goods, the sale of which at retail is excepted from the tax as provided in Section 1 (b), even when sold at stores, sales from which are subject to the tax hereby imposed. The amount thereof shall be determined in accordance with the method employed by the taxpayer in keeping his accounts. A taxpayer keeping his account on an accrual basis shall be permitted in each year to deduct a reasonable amount to care for bad debts attributable to the business for such year, subject to correction by including recoveries in gross sales for the year of recovery. A taxpayer keeping his accounts on the cash receipts and disbursements basis shall include the gross receipts from sales in the gross sales of the year of their receipt regardless of the year in which the sale was made. A taxpayer may, with the consent of the State Tax Commission, keep his accounts on the installment basis if such method properly reflects the gross sales of his business for any year, and said Commission may prescribe rules to in-

sure that such taxpayers shall properly allocate gross sales as between successive tax years. Gross sales shall not include the consideration received by a vendor from a purchaser if the sale is made from a store or mercantile establishments in this state to a purchaser residing without this state unless the purchaser is present within this state at the time of such sale and purchase. The tax imposed by Section 1, so far as measured by gross sales, shall be measured by the gross sales of the year for which the tax is imposed; provided, however, there shall be exempted from the total aggregate gross sales of any such business in each tax year the gross sales from that one of all the stores or mercantile establishments within this State under a single or common ownership, supervision or management, which the person on whom the tax is imposed shall select if the State Tax Commission is notified thereof prior to the first day of February of the year for which the tax is imposed, provided, further that as to the tax for 1933, such notification may be made on or before July 1st, 1933.

SEC. 5. Computation of tax.—The tax imposed hereby so far as measured by Section 2-(a) shall be computed on the basis of the number of stores under a single or common ownership, supervision or management on July 1st of each tax year.

SEC. 6. Tax period to begin July 1, 1933.—The first year for which this tax is hereby imposed shall be the period commencing with July 1st, 1933, and ending with December 31st, 1933. The tax imposed, so far as measured in accordance with Section 2-(a) shall for that period be due and payable on or before July 1st, 1933, and that portion of such tax so far as measured by Section 2-(b) shall be due and payable on or before January 20th, 1934.

SEC. 7. Date payable.—The tax imposed by Section 1 shall be payable as follows:

(a) That portion thereof measured by Section 2-(a) shall be paid on or before January 20th of each year.

(b) That portion thereof measured in accordance with Section 2-(b) shall be paid on or before January 20th of the

year succeeding that for which imposed or within 30 days after any person liable for such tax shall cease entirely to do business within this state of the kind on which the tax is imposed.

SEC. 8. Return to Tax Commission.—Every person on whom a tax is imposed by Section 1 shall make a return of his gross sales for the year for which the tax is imposed to the State Tax Commission on forms to be prepared by the Commission, and to be furnished him by said Commission. Said return shall be filed with the State Tax Commission on or before January 20th of the year following the year for which the tax is imposed or within 30 days after any such person shall cease entirely to do business within this state of the kind on which the tax is imposed. The Minnesota Tax Commission shall enter on its records, the amount of taxes found and determined by it to be due from any person, as hereinbefore provided, and on or before January 30th following, shall certify such amount to the State Auditor, who thereupon shall make his draft upon such person for the amount of taxes thus certified and place the same in the hands of the State Treasurer for collection. When such drafts have been placed by the State Auditor in the hands of the State Treasurer for collection, the State Treasurer shall mail, within 10 days, to the person from whom the tax is due, a written notice of the amount thereof and demand for its payment. The taxes shall be collected by and paid to the State Treasurer.

SEC. 9. Tax Commission may make assessment.—If any person required by this Act to file any return shall fail to do so within the time prescribed by this Act, or shall make, wilfully or otherwise, an incorrect, false or fraudulent return, he shall on the written demand of the Tax Commission file such return, or corrected return, within 30 days after the mailing to him of such written demand. If any person shall fail within said time to file such return, or corrected return, the Tax Commission shall make for him a return, or corrected return, from its own knowledge and from such information as it can obtain through testimony or otherwise, and assess a tax on the basis thereof, the amount of which tax

(less payment theretofore made on account of such tax) shall be certified to the State Auditor.

SEC. 10. Unpaid tax to be collected by sheriff.—If any such draft remains unpaid for more than 60 days after demand has been made by the Treasurer for its payment, recovery may be had thereon in an action in the name of the State in the same manner as if it were a debt due the State. Such tax may also be collected by having the State Auditor issue his warrant to the sheriff of any county of the state commanding him to levy upon and sell the real and personal property of the taxpayer within the county, and to return such warrant to the State Auditor and pay to him the money collected by virtue thereof by a time to be therein specified, not less than 60 days from the date of the warrant. The sheriff shall proceed thereunder to levy upon and seize any property of the taxpayer within his county, and shall sell so much thereof as is required to satisfy such taxes and his costs, but such sales shall as to their manner be governed by the laws applicable to sales of like property on execution issued against property upon a judgment of a court of record. The sheriff shall make a return to the State Auditor and the proceeds of such sale less the sheriff's costs shall be turned over by the State Auditor to the State Treasurer who shall retain such part thereof as is required to satisfy the tax and costs and pay over any balance to the taxpayer. No suit shall lie to enjoin the collection of the taxes imposed by this Act.

SEC. 11. May recover back illegal tax.—A taxpayer who has paid, voluntarily or otherwise, or from whom there has been collected (other than by the method provided for in the first sentence of Section 10) an amount of tax for any year in excess of that legally due for such year, may recover the excess by an action of law against the state in any court of record, but such action shall be commenced within 2 years after the tax claimed to be excessive has been paid.

SEC. 12. Interest on unpaid taxes.—Taxes shall bear interest at the rate of one per cent per month during the period during which they remain unpaid. Said interest shall be

collected in the same manner as hereinbefore provided for the collection of the taxes imposed by this Act.

SEC. 13. Violations a misdemeanor—Any person liable to a tax imposed by this Act who shall fail to pay the same when payable, or who shall violate any other provision of this Act, imposing duties on him, shall be guilty of a misdemeanor.

SEC. 14. Tax Commission to administer act.—The Minnesota Tax Commission shall administer and enforce the assessment of the tax imposed by this Act. It may make and publish such rules and regulations, not inconsistent with this Act, as it may deem necessary in enforcing its provisions. It shall cause to be prepared blank forms for the returns required by this Act, and shall distribute the same throughout the State and furnish them on application, but failure to receive or secure them shall not relieve any person from the obligation of making any return required of him by this Act.

SEC. 15. Tax Commission may examine books.—For the purpose of determining the correctness of any return, or of determining whether or not any person should have made a return or paid tax hereunder, the Tax Commission shall have the power to examine or cause to be examined any books, papers, records, or memoranda relevant to making such determination, whether such books, papers, records or memoranda are the property of or in the possession of the taxpayer or any other person. It shall further have the power to require the attendance of any taxpayer or other person having knowledge or information relevant to such determinations aforementioned, to compel the production of books, papers, records or memoranda by persons so required to attend, to take testimony on matters material to such determinations, and to administer oaths or affirmations in any such connection. The Tax Commission is empowered at any time and from time to time to require any owner or manager of any store in the State of Minnesota to file with the Tax Commission, a statement under oath, showing the ownership, management and control of such store for the purpose of determining whether or not such store is subject to the tax hereby imposed. Such statement

shall be in such form as the Tax Commission shall prescribe.

SEC. 16. Appropriation for expense.—There is hereby appropriated out of the moneys in the State Treasury, not otherwise appropriated, the sum of $10,000 for each of the fiscal years ending June 30, 1934, and June 30, 1935, respectively, which appropriation is hereby made to the State Tax Commission to be used by it for the purposes of collecting the tax provided for by this Act.

SEC. 17. Disposition of tax.—The revenue derived from taxes, interest, and fines provided for in this Act when collected is hereby appropriated for the purpose of being credited to the appropriation now annually made for aid to state high, graded, semi-graded, consolidated, industrial, and rural schools, as now provided by law, to be distributed by the Department of Education in accordance with existing laws.

SEC. 18. Provisions separable.—If any part or provision of this Act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not impair or invalidate any other part or provision in the remainder of the Act; and, if any part or provision of this Act shall for any reason be adjudged by any court of competent jurisdiction constitutionally inapplicable to any case or situation within the terms of such part or provision, such judgment shall not impair or invalidate such part or provision as applied to any other case or situation within their terms; and, if any exception from the tax hereby imposed shall for any reason be adjudged by any court of competent jurisdiction invalid, the tax shall be imposed upon the taxable subject as to whom or which such exception has thus been held invalid.

Approved April 12, 1933.

CHAPTER 16.

Laws and Resolutions Enacted at the Extra Session of the Forty-Eighth Legislature Commencing December 5, 1933, and Concluding January 6, 1934.

An act to amend Laws 1933, Chapter 213, Section 11, and Mason's Minnesota Statutes of 1927, Section 49.

Be it enacted by the Legislature of the State of Minnesota:

SECTION 1. Recovery of over paid tax in certain cases.—That Section 11, Chapter 213 of Laws 1933 be and the same hereby is amended to read as follows:

"SEC. 11. A taxpayer who has paid, voluntarily or otherwise, or from whom there has been collected (other than by the method provided for in the first sentence of Section 10) any tax not legally due or any amount of tax in excess of that legally due may (1) file with the Tax Commission a claim for the refund of such tax or such excess and/or (2) recover the same by an action at law against the State in any court of record, but no such claim may be filed and no such action may be brought after the expiration of two years from the date of payment of the tax involved. If a taxpayer shall file with the Tax Commission a claim for refund hereunder, no action may be brought against the State to recover the tax included in such claim until said Commission has finally disposed thereof or has failed within six months after the filing of such claim to render final action thereon.

If the Tax Commission finds that the tax for the refundment of which claim is filed was not legally due or payable, it shall issue its certificate to the taxpayer for the refundment thereof, otherwise it shall disallow such claim.

Any claim for refund allowed by the Tax Commission, and any judgment recovered against the State in an action to recover any such tax, shall include interest upon the tax refunded or recovered from the date of payment until the date of refundment or judgment at the rate of six (6) per cent per annum, and any such judgment shall bear a like rate of interest from date of entry until date of payment thereof.

Any certificate for refundment issued by the Tax Commission hereunder or a certified copy of any judgment against the State recovered hereunder may be filed with the State Auditor, who shall thereupon issue his warrant on the State Treasurer for the amount thereof in favor of the payee of such certificate or judgment creditor, as the case may be, and it shall be the duty of the State Treasurer to pay all such warrants out of any funds in the state treasury not otherwise appropriated.

There is hereby appropriated out of any funds at any time in the state treasury not otherwise appropriated (but not exceeding at any time the total amount of taxes to that time paid or collected under this act plus interest at the rate of six (6) per cent per annum on the amount of each payment of taxes from the date paid until refunded by order of the Tax Commission, or repaid pursuant to judgment recovered hereunder or until claim for refundment thereof and action for the recovery thereof are barred hereunder) such sum or sums as may be necessary from time to time, to pay such refunds and judgments.

SEC. 2. Mason's Minnesota Statutes of 1927, Section 49, insofar as inconsistent herewith is hereby amended.

Approved December 23, 1933.

(4328)

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Supreme Court of the United States

Office Supreme Court, U. S.
FILED
FEB 28 1940
CHARLES ELMORE CROPLEY
CLERK

October Term, 1939
No. 500

STATE OF MINNESOTA,

Petitioner,

vs.

NATIONAL TEA COMPANY AND ALLIED STORES CORPORATION (FORMERLY HAHN DEPARTMENT STORES, INCORPORATED),

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

BRIEF OF PETITIONER.

J. A. A. BURNQUIST,
Attorney General
of the State of Minnesota,
MATTHIAS N. ORFIELD,
Special Attorney,
GEORGE W. MARKHAM,
Special Attorney,
Counsel for Petitioner,
102 State Capitol,
St. Paul, Minnesota.

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TABLE OF TEXTS CITED.

Daniel Bloomfield, "Chain Stores and Legislation." 52

Alfred Buehler, "The Incidence of Chain Store Taxes," Journal of Marketing for January, 1937. Reprinted in Daniel Bloomfield's, "Chain Stores and Legislation." 52

Bulletin No. 1, Twentieth Century Fund, reprinted in Bloomfield's book, "Chain Stores and Legislation." 51-52

Harvard University Bureau of Business Research, bulletins prepared under direction of Carl N. Schmalz, assistant professor of marketing in Harvard University 57

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Bulletin No. 83, Operating Expenses of Department Stores and Departmentized in 1929. 58-59

Bulletin No. 85, Same for 1930 .....60-62, 66

Bulletin No. 99, Expenses and Profits of Food Chains in 1934 66-67

Bulletin No. 100, Operating Results of Department and Specialty Stores in 1935 65-66

Charles F. Phillips, assistant professor of marketing at Colgate University, Printer's Ink, Dec. 2, 1937; reprinted in "Chain Stores and Legislation," a book compiled by Daniel Bloomfield 51

Willard Thorp, Editor Dun's Review, "Changing Distribution Trends," an address delivered before American Economic Association, Dec. 29, 1938,

American Economics Review, Vol. 29, pp. 75-84. Reprinted in Bloomfield's, "Chain Stores and Legislation." ..... 47.

TABLE OF STATUTES CITED.

Section 1 of the Fourteenth Amendment to the U. S. Constitution 3, 4, 5, 7
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IN THE

Supreme Court of the United States

October Term, 1939

No. 500.

STATE OF MINNESOTA,

Petitioner,

vs.

NATIONAL TEA COMPANY AND ALLIED STORES CORPORATION (FORMERLY HAHN DEPARTMENT STORES, INCORPORATED),

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

BRIEF OF PETITIONER.

OPINIONS OF THE COURTS BELOW.

The trial court, the State District Court, rendered no opinion in these cases. Its final findings of fact and conclusions of law appear in the record at pages 40 to 54 (National Tea case) and pages 74 to 87 (Allied Stores case).

The opinion of the Supreme Court of the State of Minnesota appears at pages 677 to 684 of the record and is reported in 205 Minnesota Reports, 443-451, and in 286 Northwestern Reporter, 360-364.

STATEMENT AS TO JURISDICTION.

This case comes here under a writ of certiorari granted by this Court to review final judgments of the Supreme Court of Minnesota, the highest court of that state, holding the gross sales portion of the Minnesota chain store tax invalid because in violation of Section 1 of the Fourteenth Amendment. (See Minnesota Supreme Court's opinion, 286 N. W. 360, 362). This brings the case within the provisions of the Judicial Code, Section 237 (b) as amended, 28 United State Code Annotated, Section 344 (b), which reads:

> "It shall be competent for the Supreme Court, by certiorari, to require that there be certified to it for review and determination, with the same authority and with like effect as if brought up by writ of error, any cause wherein a final judgment or decree has been rendered or passed by the highest court of a State in which a decision could be had * * * where is drawn in question the validity of a statute of any State on the ground of its being repugnant to the Constitution * * * of the United States; * * * and the power to review under this paragraph may be exercised as well

where the Federal claim is sustained as where it is denied."

In paragraphs III and XVIII of plaintiff's complaint in the National Tea Company case (R. 4 and 21) and in paragraphs III and XV of plaintiff's complaint in the Allied Stores Corporation case (R. 58-59 and 67) plaintiff alleges that the act is in violation of the following portion of Article XIV, Section 1, of the Amendments to the Constitution of the United States:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

These allegations are denied in paragraphs III and XVIII of defendant's answer in the National Tea Company case (R. 32, 35) and in paragraphs III and XV of defendant's answer in the Allied Stores Corporation case (R. 69, 71).

Plaintiffs also contended in their complaints that the Act violates several sections of the state constitution (R. 4, 58-59). As to all of these but one the State District Court held in favor of the validity of the Act (R. 52, 84-85). It did, however, hold the Act to be in violation of Article 9, Section 1 of the state constitution. We will show in the course of this argument that the state question so raised was not of such a character as to deprive this Court of jurisdiction.

The State District Court made findings that the imposition of the gross sales portion of the tax provided by Sec-

tion 2 (b) of the act is "in violation of Article XIV, Section 1, of the Amendments to the Constitution of the United States." (National Tea case, Finding 17, R. 50) (Allied Stores case, Finding 17, R. 83.)

The making of this finding was assigned as Error No. 5 in defendant's brief in the Supreme Court of Minnesota (R. 688).

The State District Court made a Conclusion of Law to the effect that the gross sales feature of the Act, as set forth in Section 2 (b) is unconstitutional as being "in violation of Article XIV, Section 1 of the Amendments to the Constitution of the United States." (National Tea case, Conclusion of Law 15, R. 54) (Allied Stores case, Conclusion of Law 14, R. 86). The making of this conclusion of law was assigned as Error No. 6 in defendant's brief in the Supreme Court of Minnesota (R. 688). In its decision in these cases, 205 Minn. 443, 286 N. W. 360 (R. 677), the Supreme Court of Minnesota held the gross sales portion of the tax invalid on the ground that it is in violation of Article XIV, Section 1, of the Constitution of the United States and also in violation of a provision of the State constitution imposing identical restrictions. That the Minnesota Court held the restrictions imposed by the two constitutions to be identical is shown by the following quotation from the court's decision, 286 N. W. 362:

> "Under U. S. Const. Amend. XIV, S. 1, it is provided that, 'No state shall * * * deny to any person within its jurisdiction the equal protection of the laws.' Minn. Const. Art. 9, S. 1, provides: 'Taxes shall be uniform upon the same class of subjects. * * *.' In Reed v. Bjornson, 191 Minn. 254, 253 N. W. 102, we held that *these provisions of the Federal and State Constitutions imposed identical restrictions upon the*

legislative power of the state in respect to classification for purposes of taxation." (Italics ours.)

It will be conceded that the State court held the gross sales portion of this chain store tax invalid on the ground that it violates the "equal protection" clause of the Fourteenth Amendment. It may be contended, however, that while these cases were decided on that ground they were also decided on the ground that the gross sales portion of the tax violates that portion of Section 1 of Article 9 of the State Constitution reading: "Taxes shall be uniform upon the same class of subjects." Interpreting this clause the Supreme court of Minnesota has said that "equality of protection includes uniformity of application to the subject of taxation and that our uniformity clause is not more restrictive than the equal protection clause of the Fourteenth Amendment." Reed v. Bjornson, 191 Minn. 254, 261. That court has further construed this clause to mean, operating "equally and uniformly upon all persons in similar circumstances," which obviously carries the same meaning as the equal protection clause of the Fourteenth Amendment. Reed v. Bjornson, supra, 261.

This Court has held in a long line of decisions that "where the record discloses that a judgment of a state court was based, not alone upon a ground involving a Federal question, but also upon another and *independent* ground, broad enough to maintain the judgment, this court will not take jurisdiction to review such judgment". (Italics ours). Doyle v. Atwell, 261 U. S. 590, 592. In case after case, however, this Court has pointed out that to prevent jurisdiction, the State ground must be an independent ground. Doyle v. Atwell, supra, p. 592; Enterprise Irrigation Dis-

trict v. Canal Company, 243 U. S. 157, 164; Nickel v. Cole, 256 U. S. 222, 225; Fox Film Corporation v. Muller, 296 U. S. 207, 210.

This Court has also held that "where the non-federal ground is so interwoven with the other as not to be an independent matter" the Court's jurisdiction is plain. Enterprise Irrigation District v. Farmers Mutual Canal Co., 243 U. S. 157, 164. The point of all these cases is that to prevent jurisdiction the State matter decided must be independent of the Federal matter. A case exactly parallel with the present case on this point is Morehead v. N. Y. ex rel. Tipaldo, 298 U. S. 587, 603, where, (as stated by this Court, p. 603,) the Court of Appeals of New York held the minimum wage act of that State "repugnant to the due process clauses of the State and Federal Constitution." The fact that the New York court held the Act invalid because in violation of the due process clause of the State constitution did not prevent this Court from taking jurisdiction on application for certiorari. It is true that in that case the New York court certified that the Federal constitutional question was present and necessarily passed on. But when the record is clear, as it is in the present case, it speaks for itself. We should note that in the present cases the opinion of the Minnesota court shows as clearly as any certification could that the Federal constitutional question was present, necessarily passed upon, and controlling, first, by stating definitely that the equal protection clause of the Fourteenth Amendment and the uniformity of taxes clause of the State constitution impose "identical restrictions upon the legislative power of the State in respect to classification for purposes of taxation," 286 N. W. 362; secondly, by referring to five cases, (p. 363) each of which involved the validity

of a progressive gross sales tax under the first section of the Fourteenth Amendment, and then saying in conclusion (p. 364):

"We think the five cases to which we have referred have so definitely and finally disposed of the legal problem presented as to make it needless for us to analyze or discuss the great number of other tax cases where the same constitutional question was involved. These being the only cases to which we have been referred directly deciding the question presented, we are of the opinion that we should follow them and it is our duty so to do."

The question presented and decided in every one of these cases was the question whether a progressive gross sales tax violates the equal protection clause of the Fourteenth Amendment and this question was either the sole question or the controlling question in every case. That this is so is shown by the following quotations:

Stewart Dry Goods Co. v. Lewis, supra, p. 554:

"The appellants charge that the statute violates several sections of the constitution of Kentucky and several provisions of the Federal Constitution. We shall not stop to enumerate these, since we must sustain the claim that the classification made by S. 2 denies the appellants the equal protection of the laws assured by the Fourteenth Amendment."

Valentine v. Great Atlantic and Pacific Tea Co., supra, p. 33:

"The District Court, composed of three judges, held that the provision of S. 4 (b) of the statute, imposing a tax based on gross receipts from sales according to an accumulative graduated scale, was invalid under the equal protection clause of the Fourteenth Amendment

of the Constitution of the United States as creating an arbitrary discrimination. * * *"

"The decree is affirmed upon authority of Stewart Dry Goods Co. v. Lewis, 294 U. S. 550."

Ed. Shuster & Co., Inc. v. Henry, 261 N. W. 20, 22:

"Because of the absence of that essential reasonable relation in the respects stated, the tax imposed under section 76.75 (3), Stats., is arbitrary and discriminatory, under the decision in the Stewart case, and therefore section 76.75, Stats., is in violation of the Fourteenth Amendment, U. S. Const., and void."

Lane Drug Stores v. Lee, 11 F. Supp. 672, 673:

"It is unnecessary to discuss subdivision B of section 4 of the act, because the decision in Stewart Dry Goods Co. v. Lewis, * * * fully sustains the contention of plaintiffs that subdivision B of section 4 of the act is so arbitrary, unreasonable, and discriminatory that it denies to these plaintiffs equal protection of the law guaranteed by the Fourteenth Amendment of the United States Constitution."

Great Atlantic and Pacific Tea Co. v. Harvey, 107 Vt. 215, 177 A. 423:

"The decision (in the Stewart case) is controlling in the instant case. The Supreme Court of the United States is the ultimate authority upon questions arising under the Federal Constitution. * * * If the Kentucky statute offends the Fourteenth Amendment, so does the one in issue before us." 177 A. 427.

The foregoing quotations from the five cases on which the Supreme Court of Minnesota relies makes it clear that the legal problem which it considered was the validity of a

gross sales tax under the equality clause of the Fourteenth Amendment. Accordingly, when the State court says in its final paragraph, 286 N. W. 364, that these five cases have disposed of the legal question, it refers to the question as to the invalidity of the gross sales tax under the Fourteenth Amendment. The court says in effect, that this Federal question was the controlling question in the case.

The State question presented in the present cases is clearly not independent of the Federal question. By the Minnesota Court's own statement, the equal protection clause of the Federal Constitution and the uniformity of taxes clause of the State Constitution "impose identical restrictions upon the legislative power of the State in respect to classification for purposes of taxation." In such a case it necessarily follows that the State court has but one decision to make, namely, whether the act is valid under both constitutions or invalid under both constitutions. Accordingly, this Court having held the Iowa tax on gross sales of chain stores invalid in the Valentine case, on authority of the Stewart case, the Minnesota Court could make no independent decision as to the validity of the Minnesota tax on gross sales of chain stores, except to decide whether said tax and the Kentucky gross sales tax on gross sales of all retail stores were so similar as to be subject to the same objections as to their validity. The Minnesota Court found "the two acts so akin in language and purpose as to make them, in substance and effect, identical," 286 N. W. 362. This decision made, the Minnesota Court was in duty bound to follow the decision of this Court in the Stewart case and the Valentine case and hold the gross sales portion of the Minnesota tax invalid under the equal protection clause of the Fourteenth Amendment and, necessarily, the

two being identical in restrictive effect for purposes of taxation, under the uniformity of taxes clause of the State Constitution. From this it follows that in the present cases the State question was not an independent question, but was controlled by this Court's earlier decision on the identical Federal question. The hands of the Supreme Court of Minnesota were tied by decisions of this Court which we respectfully contend are incorrect.

Under 28 U. S. C. A., S. 344 (b), this Court is given discretionary power to call up for review by certiorari "any cause wherein a final judgment or decree has been rendered or passed by the highest court of a State in which a decision could be had * * * where is drawn in question the validity of a statute of any State on the ground of its being repugnant to the Constitution * * * of the United States; * * * and the power to review under this paragraph may be exercised as well where the federal claim is sustained as where it is denied."

It is apparent that under this statute this Court is given unrestricted power to review in any case in which the validity of a state law is challenged in a state court by reason of some provision of the Federal Constitution, whether it is held valid or invalid. It follows that this Court has the power to review the present cases. The only question is whether in the exercise of its discretion it should use that power.

It will be conceded that the purpose of reviewing cases from lower courts is to further the ends of justice by affording an opportunity for the correction of error. In the present cases we contend that the Supreme Court of Minnesota has been compelled to make an incorrect decision in

a case of great importance by reason of the decision of this Court in the Valentine case, supra. By reason of the State court's incorrect decision Minnesota will lose, directly and indirectly, nearly $1,500,000 in taxes. That decision is the direct and inevitable result of this Court's decision in the earlier case.

As long as the decision of this Court in that case stands it will, moreover, be impossible for any of the forty-eight states to levy a progressive chain store tax that can reach chains with enormous sales but few stores. This Court's decision in the Valentine case has placed an unwarranted restriction upon the power of the states to curb the undue expansion of a form of business which, in the opinion of many well-informed authorities, is harmful to the general welfare.

The plaintiffs might have brought an action involving only the question of the validity of this Act under the constitution of the State of Minnesota. Had they done so, no matter what the Supreme Court of the State had held, either for or against them, there would have been no appeal to this Court. They did not choose to do that but invoked the protection of their rights under the Federal Constitution. Had the Court below decided against them they would have had an unquestioned right to seek review by this Court. The state should enjoy a corresponding right to review inasmuch as the lower court's decision was based on the Fourteenth Amendment and controlled by this Court's earlier decision in the Valentine case and the Stewart case.

By granting certiorari this Court has indicated that it has jurisdiction of these cases. We trust the Court will not retreat from that decision.

STATEMENT OF THE TWO CASES.

These two cases have reached this Court under writ of certiorari granted by this Court to review final judgments herein of the Supreme Court of the State of Minnesota.

The National Tea Company, a Delaware corporation conducting business in Minnesota by the system of chain stores, commenced an action in the District Court of Ramsey County, Minnesota, under Chapter 213 of the Laws of Minnesota of 1933, as amended by Chapter 16 of the Extra Session Laws of Minnesota of 1933-1934, the chain store tax law then in effect, to recover from the State of Minnesota, $118,740.08, and interest thereon, on account of chain store taxes paid under said act (R. 39).

The Allied Stores Corporation (at the time of the commencement of the action known as Hahn Department Stores, Incorporated), another foreign corporation conducting business in Minnesota by the system of chain stores, commenced an action in the same court to recover from said State the sum of $57,827.63, and interest thereon, on account of chain store taxes paid under said act (R. 73).

The two cases involving identical questions of law and, for the most part, identical questions of fact, were consolidated and tried together before said district court and presented together on appeal to the Supreme Court of Minnesota.

In each case plaintiff alleged in its complaint that the Act was invalid on the ground that it violated Section 1 of the Fourteenth Amendment to the Constitution of the United States and also certain provisions of the State Constitution (R. 6-7, 93-94). The alleged violation of the Minnesota constitution will be referred to again in that por-

tion of this brief pertaining to the jurisdiction of this Court and there shown to be of such character as not to deprive this Court of jurisdiction.

The Act levies a composite occupational tax consisting of two portions, based respectively on the number of stores in the chain and on the total sales made by the chain. Each plaintiff brought action to recover both portions of the tax paid.

The State District Court held that portion of the Act valid which levied that portion of the tax based on the number of stores in the chain and held invalid that portion of the tax measured by total gross sales. On motion of plaintiffs (R. 513, 535) the first decisions were amended (R. 40-54, 74-87), the amended decisions altering certain findings of fact and certain conclusions of law.

Judgment was entered for National Tea Company in the sum of $88,214.92 (R. 55) and for Allied Stores Corporation in the sum of $72,346.61 (R. 87) and appeals were taken by the State to the Supreme Court of Minnesota (R. 55, 87-88). The two cases were argued together before said court. The court rendered its decision upholding the judgments of the State District Court and final judgments were entered in the State Supreme Court on June 27, 1939 (R. 685).

Extensions of time to apply to this Court for certiorari were granted by justices of this Court, extending the time from September 27 to November 6, 1939. The State's petition for certiorari was docketed in this Court on November 3, 1939 (R. 704). Certiorari was granted by this court on December 11, 1939.

STATEMENT OF FACTS.

On April 2, 1933, the governor of Minnesota approved an act passed by the state legislature imposing an occupational tax on "conducting business by the system of chain stores." This act is Chapter 213 of the Session Laws of Minnesota of 1933 (R. 22-30). Hereafter in this brief this statute as amended will be referred to as "the Act." This act is quoted in full in the appendix to this brief as Exhibit A.

ANALYSIS OF THE PERTINENT PROVISIONS OF THE ACT.

The act levies a progressive occupational tax upon each person conducting a business within Minnesota by the system of chain stores.

Definitions.

The act defines "person" to include individuals, trusts, associations, joint stock companies, corporations and firms, however organized and whatever the plan of operation. (Sec. 1 (a).

The act defines "store" to mean "any fixed place at which business is conducted even if said place is at the same time being used for other purposes." (Sec. 3).

"Conducting a business by the system of chain stores" is defined to mean "conducting such business from two or more stores under a single or common ownership, supervision or management." Two or more stores are declared to be under a single or common ownership, supervision or

management "if directly or indirectly owned or controlled by a single person or any group of persons having a common interest in such stores or mercantile establishments, or if any part of the gross revenues, net revenues, or profits, from any such stores or mercantile establishments shall directly or indirectly be required to be immediately or ultimately made available for the beneficial uses, or shall directly or indirectly inure to the immediate or ultimate benefit of any single person or any group of persons having a common interest therein." (Sec. 3).

The Tax Levied.

The tax consists of two portions: A specific amount, progressive in character, based on the number of stores in the chain, provided for in Section 2 (a) of the Act, and a second amount, also progressive in character, based on the combined gross sales of all the stores in a chain in excess of one, provided for in Section 2 (b) of the Act.

Section 2 (a) of the Act levies a progressive occupational tax on each chain store organization conducting business within the state, based on the number of stores under a single or common ownership, supervision, or management, as follows:

(1) $5 for each stores in excess of one but not in excess of 10.

(2) $15 for each store in excess of 10 but not in excess of 20.

(3) $35 for each store in excess of 20 but not in excess of 30.

(4) $65 for each store in excess of 30 and not in excess of 40.

(5) $105 for each store in excess of 40 and not in excess of 50.

(6) $155 for each store in excess of 50.

Section 2 (b) of the Act levies a progressive tax on said chain store organizations measured by the amount of gross sales made in Minnesota, as follows:

(1) 1/20 of one per cent on that portion of gross sales not in excess of $100,000.

(2) 2/20ths of one per cent on that portion of the gross sales in excess of $100,000 but not in excess of $200,000.

(3) 3/20ths of one per cent on that portion of the gross sales in excess of $200,000 and not in excess of $300,000.

(4) 4/20ths of one per cent on that portion of the gross sales in excess of $300,000 and not in excess of $400,000.

(5) 5/20ths of one per cent on that portion of the gross sales in excess of $400,000 and not in excess of $500,000.

(6) 6/20ths of one per cent on that portion of the gross sales in excess of $500,000 and not in excess of $600,000.

(7) 8/20ths of one per cent on that portion of the gross sales in excess of $600,000 and not in excess of $700,000.

(8) 10/20ths of one per cent on that portion of the gross sales in excess of $700,000 and not in excess of $800,000.

(9) 12/20ths of one per cent on that portion of the gross sales in excess of $800,000 and not in excess of $900,000.

(10) 15/20ths of one per cent on that portion of the gross sales in excess of $900,000 and not in excess of $1,000,000.

(11) One per cent on that portion of the gross sales in excess of $1,000,000.

Section 4 of the Act exempts from the tax the gross sales of one store selected by the taxpayer.

Exemptions Not in Issue Here.

Various exemptions are provided for in the act. The validity of these was attacked in plaintiff's complaints. They were in issue before the State District Court but they are not in issue here for the reason that the State District Court found them to be valid and plaintiffs have taken no appeal (R. 52-53, 85-86).

Authority to Sue the State.

Authority to bring this action is given by the Extra Session Laws of Minnesota, 1933-1934, Chapter 16. This act is printed in full in the appendix to this brief as Exhibit B.

NATURE OF THE TAX.

As to the nature of the tax the State District Court found that "The act imposes a composite *occupational tax* upon persons engaged in conducting business within the state by

the system of chain stores." (R. 51, 84). As plaintiffs did not appeal these findings stood unchallenged before the Supreme Court of Minnesota and stand unchallenged here. (Italics ours.)

AMOUNT OF TAXES COLLECTED UNDER THE ACT.

Collections of taxes under this act have been as follows: (R. 43, 77).

For the last half of 1933:	
Specific tax	$ 43,060.00
Gross Sales tax	137,764.12
For the year 1934:	
Specific tax	42,350.00
Gross sales tax	358,786.33
For the year 1935:	
Specific tax	37,190.00
Total	$619,150.45

CLASSIFICATION OF TAXPAYERS.

306 chains reported in 1934. The State District Court's findings classifies these chains as follows (R. 43, 77):

2-store chains	151
3-store chains	56
4-store chains	24
5—10 stores	47
11—20 stores	17
21—50 stores	7
51 stores or more	4

With respect to volume of sales, according to the findings, said 306 chains reported sales as follows (R. 43, 77):

Aggregate annual sales less than $10,000..... 4
Aggregate sales $10,000 to $25,000.....14
Aggregate sales $25,000 to $50,000.....35
Aggregate sales $50,000 to $100,000.....58
Aggregate sales $100,000 to $200,000.....74
Aggregate sales $200,000 to $300,000.....28
Aggregate sales $300,000 to $1,000,000.....78
Aggregate sales $1,000,000 to $4,000,000.....11
Aggregate sales over $4,000,000..... 4

COMPARISON OF SALES BY CHAIN STORES AND SINGLE STORES IN 1929 AND 1933, SHOWING GROWTH OF SALES BY CHAIN STORES.

The State District Court found that in 1929 and 1933 the proportionate volume of retail business done by chains and single stores in Minnesota was as follows (R. 44, 78):

CHAINS.

1929 ..... 13.5%
1933 ..... 17.8%

INDEPENDENTS.

1929 ..... 79.3%
1933 ..... 76.8%

For the entire United States, according to the findings, the figures were as follows (R. 44, 78):

CHAINS.

1929	20 %
1933	25.2%

INDEPENDENTS.

1929	77.5%
1933	71.2%

It is apparent that during the four years immediately preceding the enactment of the Act there had been a marked trend in the State of Minnesota and in the United States toward the elimination of independent stores by chain stores.

ADVANTAGES IN MERCHANDISING ENJOYED BY CHAIN STORES.

The State District Court found that chain stores enjoy sixteen substantial advantages in merchandising over independent stores (R. 45-46, 78-80). These are set forth in full under point 2 and need not be stated here.

These advantages are shown in the Argument to be of such character that they must necessarily increase with increases in the total sales of the chain.

NET PROFITS GENERALLY INCREASE WITH AN INCREASE IN THE SIZE OF THE CHAIN.

The State District Court found as follows:

> "The volume of sales per store in different kinds of business varies considerably and there (fol. 71) are considerable variations in average sales per store and in average profits per store in chain store groups selling substantially the same kinds of merchandise, but generally the chain store groups having the largest number of stores make a larger profit than chain store groups selling substantially the same kind of merchandise and having a smaller number of stores. Generally, but by no means always, profits per chain store in the same line of business tend to increase with the number of stores in a chain."

UNFAIR METHODS OF COMPETITION USED BY CHAIN STORES.

The State District Court found as follows (R. 46, 80):

> "In the past prior to the pasisng of the unfair trade practices act in Minnesota in 1937 chain stores have injured competitors and extended their own business by the use of loss leaders."

The District Court also found that "The chain store groups receive substantial special rebates and advertising allowances generally not granted to independent stores." (R. 45, 679). This is now recognized to be an unfair method of competition. Defendant's Exhibits 3, 5, 8, 9, 10, 12, 12a, 12b, 12c, 12d, 13, 14, 14a, 14b, 15, 16, 17 and 18 (R. 566-577) show that the granting of special secret rebates to National Tea Company is the common practice of a large

number of the manufacturers and producers with which it deals and is followed to such an extent that it places weaker competitors, whether independent or chain, under a great handicap.

EFFECTS INJURIOUS TO THE GENERAL WELFARE PRODUCED BY CHAIN STORES.

Not only did the State District Court find that chain organizations have used unfair methods of competition, but it found that the chains enjoy sixteen substantial advantages in merchandising over single stores. Possessing these advantages the chains proceeded to use them to crowd out weaker competitors. In its first decision the State District Court found that the development of chain stores has had many effects injurious to the general welfare of which the following seem especially important (R. 508, 530-531):

1. It has driven independent stores out of business and taken over a larger and larger portion of the field of retail merchandising.

2. It has driven out of business a considerable number of wholesalers and added considerably to unemployment and considerably lessened the taxable value of the property of the state.

3. It has greatly reduced the number of traveling salesmen and thereby added to unemployment.

Mr. Landin testified that under his management the National Tea Company grew from a chain of 12 or 13 stores to one of over 200. He testified that after a new store had been opened, the company would use the loss leader method to bring in trade, that is, it would cut prices on certain items, such as flour, sugar and soap, to about actual cost

without overhead included. This, he testified, proved to be so effective that many of the chain's competitors were driven out of business. (R. 354-355). Mr. Landin testified that substantially the entire business of the larger chains in Minnesota was withdrawn from the local jobbers, causing many of them to go out of business, and that as the jobbing houses went out of business, many traveling salesmen lost their jobs, thereby adding to unemployment. (R. 361-362).

In finding the above injuries to the general welfare produced by chain stores the State District Court gave proper recognition to uncontroverted evidence bearing on the police power purposes of the Act. On motion of the plaintiffs this finding was omitted from the final decision and we assigned this action as error. It is true, however, that a substantial body of findings remains in the final decision to show the police power purposes of the Act. (R. 514, 536, 686-687, 689-691).

FACTS APPLICABLE SOLELY TO NATIONAL TEA COMPANY.

We quote from the State District Court findings:

"The plaintiff is a corporation organized under the laws of the State of Delaware, and is and for many years has been engaged in the State of Minnesota in conducting a retail grocery and meat business by the system of chain stores as defined by the act, and if the act be valid is subject to the tax thereby imposed.

"Plaintiff transacts business in the states of Minnesota, North Dakota, South Dakota, and Wisconsin. By far the greater number of its stores are located in Minnesota. On July 1, 1935, of a total of one hundred forty-

seven (147) stores one hundred twenty-two (122) were located in Minnesota. Its total gross sales in the state were in the last six months of 1933, $2,900,760.00, in 1934, $5,192,250.00, and in 1935, $5,428,978.83. From 1923 to 1929 it had a rate (fol. 76) of net profit in percentage of gross sales on its Minnesota business as follows:

Year	Percentage
1923	2.94
1924	4.39
1925	2.34
1926	2.51
1927	2.48
1928	.54
1929	1.48

"For the years 1930 to 1934 it suffered a net loss on its Minnesota business in the following percentages:

Year	Percentage
1930	2.86
1931	2.78
1932	.26
1933	1.83
1934	1.97

"These profit and loss figures correspond almost exactly with the profit and loss figures of the plaintiff on its entire business within and without the State of Minnesota."

"The stores of the plaintiff are distributed generally throughout the state, and are operated in both large and (fol. 77) small cities and towns. Generally speaking, the stores are operated in direct competition with stores in the same line of business operated by other chains, by the members of voluntary chains, and by owners of single stores. Commonly in plaintiff's store location are found competing stores involving all three

types of operation. The competing chains are of various sizes as measured either by number of stores or aggregate gross sales. The result has been that these competitors have been subject to and have paid taxes under the act at various rates, both as to the specific and gross sales tax features. Thus an analysis of the taxes paid by the plaintiff and twenty-two of its principal chain competitors for the year 1934 shows that the gross sales tax average or composite rates paid by the competitors varied from .05 per cent to .85 per cent as compared with the rate of .87 per cent paid by plaintiff. The maximum rates varied from 1/20 of one per cent to one per cent, the latter being the maximum rate paid by plaintiff. The specific tax rates (in percentage of gross sales) of plaintiff's competitors ranged from .0001 per cent to .15 per cent, as compared with the plaintiff's rate of .36 per cent. The total rates of the two taxes combined varied from .056 per cent to .94 per cent for plaintiff's competitors compared with 1.23 per cent for plaintiff."

"On or about July 10, 1933, the Tax Commission of the State of Minnesota assessed a specific tax against the plaintiff for the last half of the year 1933 in the sum of $19,760.00, and on or about July 20, 1934, assessed a specific tax against the plaintiff for the year 1934 in the sum of $16,505.00 and a gross sales tax for the last half of the year 1933 in the sum of $21,877.67, and on or about January 20, 1935, assessed a specific tax against the plaintiff for the year 1935 in the sum of $14,180.00 and a gross sales tax for the year 1934 in the sum of $45,222.51, making a total amount of tax assessed against the plaintiff under said act of $117,545.18.

"The Auditor and Treasurer of said defendant demanded of plaintiff payment of each of said sums following the assessment of the same and threatened to enforce

collection and payment thereof by levy upon and sale of plaintiff's personal property in the state.

"Under such threat in each instance and under protest plaintiff paid the taxes so assessed as follows:

> On or about January 20, 1934, specific tax for the last half of the year 1933 in the sum of $19,760.00, together with interest thereon in the sum of $1,194.90, and a gross sales tax for the last half of the year 1933 in the sum of $21,877.67, and specific tax for the year 1934 in the sum of $16,505.00, and on or about March 3, 1935, a specific tax for the year 1935 in the sum of $14,180.00 and gross sales tax for the year 1934 in the sum of $45,222.51, making a total amount of tax paid by plaintiff under said act, with interest, of $118,740.08." (R. 48-49).

The Court will note that National Tea Company sustained losses on its business only during depression years, 1930 to 1934, and made substantial profits during the normal years, 1923 to 1929.

FACTS APPLICABLE SOLELY TO ALLIED STORES CORPORATION.

We quote from the State District Court's findings of fact:

"The plaintiff is a corporation, and during and since 1929 has been the owner of all the capital stock of The Golden Rule, Inc. and L. S. Donaldson Company, corporations organized under the laws of the State of Minnesota, and if the Act be valid the plaintiff is subject to the tax thereby imposed. At the commencement of this action the name of the plaintiff was Hahn Department Stores, Incorporated (fol. 144). Since then the name of the plaintiff has been changed to Allied Stores Corporation. Since 1929 and before, The Golden Rule, Inc. operated a retail department store in the city of Saint Paul, Minnesota, and L. S. Donaldson Company operated a retail department store in the city of Minneapolis, Minnesota.

"From 1929 to 1934 the L. S. Donaldson Company and The Golden Rule, Inc. had a rate of net profit in percentage of gross sales as follows (Profit is indicated by 'P' and Losses by 'L'):

Year	L. S. Donaldson Company	The Golden Rule, Inc.
1929	L. 10.11	L. 1.26
1930	L. 7.48	P. 0.51
1931	L. 9.02	P. 0.55
1932	L. 13.27	L. 3.97
1933	L. 8.10	P. 0.17
1934	L. 3.25	L. 1.30

"The total result of the six years' operations by The Golden Rule, Inc. was a net loss.

"The average net profit or loss ratios of department stores generally for the years 1932, 1933 and 1934 were

as follows, the stores being grouped according to sales volume per store:

Sales Volume	1932	1933	1934
$500,000 to $1,000,000	L. 7.9	L. 0.7	P. 1.3
$1,000,000 to $2,000,000	L. 6.6	P. 0.4	P. 0.8
$2,000,000 to $5,000,000	L. 5.3	L. 0.8	P. 0.1
$5,000,000 to $10,000,000	L. 5.5	L. 1.5	P. 0.4
Over $10,000,000	L. 6.1	L. 1.1	L. 0.6"

"'On or about July 15, 1933, the Tax Commission of the State of Minnesota assessed a specific tax against the plaintiff, Allied Store Corporation, the name of which was then Hahn Department Stores, Incorporated for the year 1933 in the sum of $5.00 and on or about January 20, 1934, assessed a specific tax against the plaintiff for the year 1934 in the sum of $5.00 and a gross sales tax for the last six months of the year 1933 in the sum of $16,910.25, and on or about January 20, 1935, assessed a specific tax against the plaintiff for the year 1935 in the sum of $5.00 and a gross sales tax for the year 1934 in the sum of $40,902.38, making a total of taxes assessed against the plaintiff under the said act of $57,827.63.

"The Auditor and Treasurer of said defendant demanded of plaintiff payment of each of said sums following assessment of the same and threatened to enforce collection and payment thereof by levy upon and sale of plaintiff's personal property in the State.

"Under such threat in each instance and under protest plaintiff paid the taxes so assessed as follows:

On or about January 22, 1934, specific tax for the last half of the year 1933 in the sum of $5.00, together with interest in the sum of thirty-five cents, and specific tax for the (fol. 148) year 1934 in the amount of $5.00 and a gross sales tax for the last half of the year 1933 in the amount of $16,910.25, and on or about January 23, 1935, a specific tax for the year 1935 in the sum of

$5.00 and a gross sales tax for the year 1934 in the sum of $40,902.38, making a total amount of tax paid by plaintiff under said Act, with interest of $57,827.98." (R. 83-84).

It is a matter of common knowledge that, except for the first part of 1929, all of the years from 1929 to 1934, inclusive, during which losses were incurred by the Minneapolis, Minnesota, store of Allied Stores Corporation, were depression years, when businesses of all kinds were sustaining losses. Even so it is clear that the experience of the Minneapolis store was altogether exceptional in this chain, for plaintiff's Exhibit O shows that during 1933 the 27 stores of Allied Stores Corporation, then known as Hahn Department Stores, made a small net profit and during 1934 this profit rose to 1.41 per cent of its $70,828,100 in sales, or $998,676.21. (R. 221, 650-651).

Additional facts will be presented at appropriate places in the argument.

SPECIFICATION OF ASSIGNED ERRORS INTENDED TO BE URGED.

All of the assigned errors will be urged, these being as follows:

1.

The Supreme Court of Minnesota erred in holding that the gross sales portion of the Minnesota chain store tax is arbitrary, unreasonable, unequal and discriminatory and for that reason in violation of the first section of the Fourteenth Amendment and the uniformity of taxes clause of Section 1 of Article 9 of the Minnesota Constitution.

2.

The Supreme Court of Minnesota erred in considering only the revenue aspects of this tax and in failing to consider that this tax was levied also for the police power purpose of restraining the undue expansion of chain stores.

3.

The Supreme Court of Minnesota erred in failing to hold that the development of chain store groups in Minnesota has had many effects injurious to the general welfare, among (fol. 2164) which are the following:

(1) By reason of the advantages of chain stores over independent stores, chain stores throughout Minnesota have gradually been driving independent stores out of business and gradually been taking over a larger and larger portion of the total field of retail sales made within the state.

(2) The development of chain store groups in Minnesota has driven out of business a considerable number of jobbers and wholesale houses within the state and thereby added considerably to unemployment and considerably lessened the value of the taxable property within the state.

(3) It has greatly reduced the number of traveling salesmen and thereby added to unemployment.

(4) It has caused farmers throughout the state to find less ready market for their fruit and vegetable products.

(5) Money has been withdrawn from banks in the villages and smaller cities where chain stores have operated and has been concentrated in the larger cities, thereby weakening the banking structure in rural communities.

A chain store group with a comparatively small number of stores is less injurious to the general welfare in the respects set forth in this paragraph than a chain store group with a large number of stores. The tendency is for the injury to the general welfare to increase with an increase in the number of stores in a chain.

4.

The Supreme Court of Minnesota erred in failing to hold that the composite chain store tax levied by the Act is an appropriate and valid measure to raise revenue and counteract the social and economic ill effects produced by the undue expansion of chain stores.

5.

The Supreme Court erred in holding that the gross sales (fol. 2165) tax is laid as excise upon individual sales, and that the sale of a given quantity of goods by a chain with large gross sales is the same act as the sale of the same quantity of goods by a chain with small gross sales.

6.

The Supreme Court of Minnesota erred in holding that the gross sales tax is not a privilege tax.

7.

The Supreme Court of Minnesota erred in holding that the amount of the gross sales portion of this chain store tax bears no relation to the value of the privilege granted.

8.

The Supreme Court erred in holding that there is no constant or uniform relation between the volume of gross sales and the amount or rate of net profit.

9.

The Supreme Court of Minnesota erred in holding that the classification of chain stores on the basis of volume of gross sales does not rest upon a rational relation to the purposes of the Act.

Wherefore, on account of the errors hereinbefore assigned, appellant prays the Supreme Court of the United States to issue its writ of certiorari herein to the end that the judgments herein of the Supreme Court of the State of Minnesota dated June 27, 1939, may be reviewed by said court.

The foregoing errors will be urged under the following points:

SUMMARY OF ARGUMENT.

POINT 1.

A state may properly levy a tax for the dual purpose of raising revenue and to promote its social and economic welfare.

Authorities on law:

Sonzinsky v. United States, 300 U. S. 506; 57 S. Ct. 554; 81 L. Ed. 772.

Pacific American Fisheries v. Alaska, 269 U. S. 269; 46 S. Ct. 110; 70 L. Ed. 270.

Child Labor Tax Case, 259 U. S. 20; 42 S. Ct. 449; 66 L. Ed. 817.

Great Atlantic and Pacific Tea Company v. Grosjean, 301 U. S. 412; 57 S. Ct. 772; 81 L. Ed. 1193.

Fox v. Standard Oil Company, 294 U. S. 87; 55 S. Ct. 333; 79 L. Ed. 780.

Alaska Fish Co. v. Smith, 255 U. S. 44; 41 S. Ct. 219; 65 L. Ed. 489.

Magnano v. Hamilton, 292 U. S. 40; 54 S. Ct. 599; 78 L. Ed. 1109.

POINT 2.

The Minnesota chain store tax was laid for the dual purpose of raising revenue and to promote its social and economic welfare.

Authorities on law:

Borden's Farm Products Co. v. Baldwin, 293 U. S. 194; 55 S. Ct. 187; 79 L. Ed. 1679.

Authorities on fact:

Willard Thorp, Editor of Dun's Review, "Changing Distribution Trends", printed in American Economic Review, Vol. 29, pp. 75-84, March, 1939. Reprinted in Chain Stores and Legislation, compiled by Daniel Bloomfield.

Charles F. Phillips, assistant professor of marketing at Colgate University, Printer's Ink, Dec. 2, 1937; reprinted in "Chain Stores and Legislation," a book compiled by Daniel Bloomfield. See p. 143 in Bloomfield's book.

Bulletin No. 1, Twentieth Century Fund, reprinted in Bloomfield's book, "Chain Stores and Legislation." See p. 100.

Alfred Buehler, "The Incidence of Chain Store Taxes," Journal of Marketing for January, 1937. Reprinted in Daniel Bloomfield's, "Chain Stores and Legislation." See p. 45.

POINT 3.

The classification of chain stores for taxation on the dual basis of number of stores and gross sales is reasonable and valid under the equal protection clause and the due process clause of the Fourteenth Amendment.

Classification for the purpose of taxation is permissible.

Authorities on law:

Brown Foreman Co. v. Kentucky, 217 U. S. 563; 30 S. Ct. 578; 54 L. Ed. 883.

Capacity to pay taxes increases with the size of the business measured in terms of total sales.

Authorities on fact:

Harvard University Bureau of Business Research, bulletins prepared under direction of Carl N. Schmalz, Assistant Professor of Marketing in Harvard University 57

Bulletin No. 74, Operating Expenses of Department Stores and Departmentized Specialty Stores in 1927 57

Bulletin No. 78, Operating Expenses of Department Stores in 1928 64-65

Bulletin No. 83, Operating Expenses of Department Stores and Departmentized Specialty Stores in 1929 58-59

Bulletin No. 85, Same for 1930 ..... 60-62, 66

Bulletin No. 99, Expenses and Profits of Food Chains in 1934 66-67

Bulletin No. 100, Operating Results of Department and Specialty Stores in 1935.....65-66

Slight differences between the subjects taxed are sufficient to sustain classification.

Authorities on law:

Rast v. Van Deman, 240 U. S. 342; 36 S. Ct. 370; 60 L. Ed. 679.

Cargill Co. v. Minnesota, 180 U. S. 452; 21 S. Ct. 423; 45 L. Ed. 619.

Quong Wing v. Kirkendall, 223 U. S. 59; 32 S. Ct. 192; 56 L. Ed. 350.

Bradley v. Richmond, 227 U. S. 477; 33 S. Ct. 318; 57 L. Ed. 603.

Metropolis Theatre Co. v. Chicago, 228 U. S. 61; 33 S. Ct. 441; 57 L. Ed. 730.

State ex rel. Chase v. Minnesota Tax Commission, 135 Minn. 205; 160 N. W. 498.

Raymond v. Holm, 165 Minn. 215; 206 N. W. 166.

Apartment Owners Association v. City of Minneapolis, 191 Minn. 365; 254 N. W. 443.

Reed v. Bjornson, 191 Minn. 254; 253 N. W. 102.

This Court has upheld taxes laid upon a graduated basis.

Authorities on law:

State Board of Tax Commissioners v. Jackson, 283 U. S. 527; 51 S. Ct. 540; 75 L. Ed. 1248.

Great Atlantic and Pacific Tea Company v. Maxwell, 284 U. S. 575; 52 S. Ct. 26; 76 L. Ed. 500.

Liggett Co. v. Lee, 288 U. S. 517; 53 S. Ct. 481; 77 L. Ed. 929.

Fox v. Standard Oil Co., 294 U. S. 87; 55 S. Ct. 333; 79 L. Ed. 780.

Great Atlantic and Pacific Tea Company v. Grosjean, 301 U. S. 412; 57 S. Ct. 772; 81 L. Ed. 1193.

Pacific Fisheries v. Alaska, 269 U. S. 269;

The chain store taxes sustained by the Supreme Court of the United States are the same in principle as the Minnesota tax. The operation of the Minnesota tax with its dual measure of size is more nearly equitable than the operation of the specific tax alone.

Authorities on fact:

Summary of the Minnesota chain store tax records appearing in plaintiff's Exhibit A.

The Minnesota tax with its dual measure of size is sustainable for the same reasons as a tax on chain store taxes based only on number of stores.

Economies of large scale buying available to the larger chains.

Economies in advertising available to the larger chains.

Economies in financing available to the larger chains.

Economies in warehousing available to the larger chains.

Advantage of the larger chains in advertising rebates.

Advantages of the larger chains in distributing goods to their stores.

The combined rates of the Minnesota composite tax are not confiscatory.

The existence of differences in profit margins between different chains does not render this tax arbitrary.

The sale of a given quantity of goods by a chain with large total sales differs substantially from the sale of the same quantity of goods by a smaller chain. This difference may properly be made the basis of classification for the purpose of taxation.

POINT 4.

A state may use its taxing power to restrain the growth of monopolies.

Authorities on law:

Crescent Oil Company v. Mississippi, 257 U. S. 129; 66 L. Ed. 166; 42 S. Ct. 42.

Great Atlantic and Pacific Tea Co. v. Grosjean, 301 U. S. 412; 57 S. Ct. 772, 81 L. Ed. 1193.

POINT 5.

This Court's decision in the case of Valentine v. Great Atlantic and Pacific Tea Company, 299 U. S. 32, is erroneous and should be overruled.

Authorities on law:

State Board of Tax Commissioners v. Jackson, 283 U. S. 527;

Liggett Co. v. Lee, 288 U. S. 517;

Fox v. Standard Oil Co., 294 U. S. 87;

Valentine v. Great Atlantic and Pacific Tea Company, 299 U. S. 32;

Great Atlantic and Pacific Tea Co. v. Grosjean, 301 U. S. 412.

POINT 6.

This Court is asked to reconsider and overrule its decision in the case of Stewart Dry Goods Co. v. Lewis, 294 U. S. 550, if it shall deem the decision in that case controlling in these.

Authorities on law:

Stewart Dry Goods Co. v. Lewis, 294 U. S. 550; 55 S. Ct. 525; 79 L. Ed. 1054.

Moore v. State Board of Charities and Corrections, 239 Ky. 729; 40 S. W. (2d) 349.

POINT 7.

The decision of the Supreme Court of Minnesota in the present cases is not in harmony with the decisions of this Court:

Authorities on law:

State Board of Tax Commisioners v. Jackson 283 U. S. 527; 51 S. Ct. 540; 75 L. Ed. 1248..

Liggett Co. v. Lee, 288 U. S. 517, 53 S. Ct. 481; 77 L. Ed. 780.

Fox v. Standard Oil Co., 294 U. S. 87; 55 S. Ct. 333; 79 L. Ed. 780.

Valentine v. Great Atlantic and Pacific Tea Co., 299 U. S. 32; 57 S. Ct. 772; 81 L. Ed. 1193.

Great Atlantic and Pacific Tea Co. v. Grosjean, 301 U. S. 412; 57 S. Ct. 772; 81 L. Ed. 1193.

POINT 8.

There is a reasonable relationship between this tax and the purposes of the Act.

Authorities on law:

Fox v. Standard Oil Co., 294 U. S. 87; 55 S. Ct. 333; 79 L. Ed. 780.

Great Atlantic and Pacific Tea Co. v. Grosjean, 301 U. S. 412; 57 S. Ct. 772; 81 L. Ed. 1193.

POINT 9.

The Minnesota Chain Store Tax is a privilege tax.

POINT 10.

This Court should render a final decision.

Authorities:

Reed v. Bjornson, 191 Minn. 254, 261; 253 N. W. 102.

National Tea Co. v. State, Allied Stores Corporation v. State, 205 Minn. 443, 447; 286 N. W. 360, 362.

Lake Superior C. I. Mines v. Lord, 271 U. S. 577, 581.

POINT 1.

A state may properly levy a tax for the dual purpose of raising revenue and to promote its social and economic welfare.

The police power is an inherent power of the states and should not be interfered with by the federal courts except in cases of manifestly arbitrary exercise. In Powell v. Pennsylvania, 127 U. S. 678, this Court said:

> "It is scarcely necessary to say that if this statute is a legitimate exercise of the police power of the state for the protection of the health of the people, and for the prevention of fraud, it is not inconsistent with that amendment; for it is the settled doctrine of this court that, as government is organized for the purpose, among others, of preserving the public health and the public morals, *it cannot divest itself of the power to provide for those objects, and that the fourteenth amendment was not designed to interfere with the exercise of that power by the states.*" (Italics ours)

When a state legislature levies a tax it generally exercises both its taxing power and its police power: its taxing power, in passing an act to raise revenue, and its police power in various ways, such as, by selecting certain subjects for taxation and exempting others, and thereby encouraging certain types of enterprise by making them tax exempt. Such an exemption is written into the Minnesota Constitution, Article 9, Section 1, where it is provided that all seminaries of learning, churches and church property, and institutions of public charity shall be exempt from taxation. In granting this exemption the State exercises its police power to encourage the development of that which it exempts from the burden of a tax. Luxuries are taxed more heavily than necessities with the thought that while there must be revenue the general welfare requires that taxes fall less heavily upon those things which men must have in order to live. Minnesota taxes homesteads less heavily than other real property for the reason that home ownership makes for a better citizenship and should be encouraged. Most states tax liquor heavily in order to discourage excessive consumption. Legislatures often tax certain commodities at prohibitive rates in order to discourage their production and thereby encourage the use of other commodities. Such is the tax on oleomargarine. The United States once levied a prohibitive tax on state bank notes in order to drive them out of circulation.

In the case of Sonzinsky v. United States, 300 U. S. 506, 513, Mr. Justice Stone points out that every tax has police power aspects. We read:

> "Every tax is in some measure regulatory. To some extent it interposes an economic impediment to the activity taxed as compared with others not taxed."

To the same effect is the statement by Mr. Justice Holmes in Pacific American Fisheries v. Alaska, 269 U. S. 269, 277:

> "Any tax is a discouragement and therefore a regulation so far as it goes * * *."

This Court has long recognized that laws may properly be enacted for the dual purpose of raising revenue and for some police power purpose. In the Child Labor Tax Case, 259 U. S. 20, 38, this Court, speaking by Mr. Chief Justice Taft, said:

> "Taxes are occasionally imposed in the discretion of the legislature on proper subjects with the primary motive of obtaining revenue from them and with the incidental motive of discouraging them by making their continuance onerous."

Nowhere has this dual purpose in taxation been more clearly stated than in two of the chain store tax cases passed upon by this Court. In Great Atlantic & Pacific Tea Co. v. Grosjean, 301 U. S. 412, Mr. Justice Roberts, speaking for the majority of the Court, said (pp. 425-426):

> "Our decision need not, however, rest on conceptions of subject, measure, and rate of tax. Much broader considerations touching the state's internal policy of police sustain the exaction. * * * In the exercise of its police power the state may forbid, as inimical to the public welfare, the prosecution of a particular type of business, or regulate a business in such manner as to abate evils deemed to arise from its pursuit. Whatever a state may forbid or regulate it may per-

mit upon condition that a fee be paid in return for the privilege, and such a fee may be exacted to discourage the prosecution of a business or to adjust competitive or economic inequalities. Taxation may be made the implement of the exercise of the state's police power; and proper and reasonable discrimination between classes to promote fair competitive conditions and to equalize economic advantages is therefore lawful."

There could be no clearer recognition of a state's right to curb the undue expansion of chain stores than the following paragraph of the Court's opinion (p. 426):

"If in the interest of the people of the state, the legislature deemed it necessary either to mitigate evils of competition as between single stores and chains or to neutralize disadvantages of small chains in their competition with larger ones, or to discourage merchandising within the state by chains grown so large as to become a menace to the general welfare, it was at liberty to regulate the matter directly or to resort to the type of taxation evidenced by the Act of 1934 as a means of regulation."

To the same effect is the statement by Mr. Justice Cardozo in the majority opinion in the case of Fox v. Standard Oil Company, 294 U. S. 87, 100-101, which reads:

"A chain, as we have seen, is a distinctive business species, with its own capacities and functions. Broadly speaking, its opportunities and powers become greater with the number of its component links; and the greater they become, the more far-reaching are the consequences, both social and economic. For that reason the state may tax the large chains more heavily than the small ones, and upon a graduated basis, as indeed we have already held, (citing cases). Not only

may it do this, but it may make the tax so heavy as to discourage multiplication of units to an extent believed to be inordinate, and by the incidence of the burden develop other forms of industry. (citing cases) * * * A motive to build up through legislation the quality of men may be as creditable in the thought of some as a motive to magnify the quantity of trade."

Not only may a state tax in such manner as to encourage one form of business and restrict the development of another, but it may tax so heavily as to destroy a business without violating the equal protection clause of the Fourteenth Amendment.

In Alaska Fish Co. v. Smith, 255 U. S. 44, 48, a statute of Alaska, levying a heavy license tax upon persons manufacturing fish oil, was held valid against the contention that it would confiscate plaintiff's business. The Court said:

"If Alaska deems it for its welfare to discourage the production of herring for manure and to preserve them for food for man or for salmon, and to that end imposes a greater tax upon that part of plaintiff's industry than upon similar use of other fish * * *, it hardly can be said to be contravening a Constitution that has known protective tariffs for a hundred years. * * * Even if the tax should destroy a business it would not be made invalid or require compensation upon that ground alone. Those who enter upon a business take that risk."

The oleomargarine tax considered in Magnano v. Hamilton, 292 U. S. 40, was presumably destructive of the business, the tax being fifteen cents per pound; but it was held valid, this Court saying (p. 45):

> "The point may be conceded that the tax is so excessive that it may or will result in destroying the intrastate business of appellant; but that is precisely the point which was made in the attack upon the ten per cent. tax imposed upon the notes of state banks involved in Veazie Bank v. Fenno, 8 Wall. 533, 548. This court there disposed of it by saying that the courts are without authority to prescribe limitations upon the exercise of the acknowledged powers of the legislative departments."

From what has been said it is clear that this Court recognizes that a state may properly exercise its police power in connection with its taxing power in levying a chain store tax.

POINT 2.

The Minnesota chain store tax was laid for the dual purpose of raising revenue and to promote the general welfare by restricting the undue expansion of chain stores.

In considering the question whether the legislature, in levying this tax, was seeking to restrain the undue expansion of chain stores, we contend that this Court should take judicial notice of several facts of common knowledge. The first of these is that for a period of several decades chain stores have made a rapid encroachment upon the field of merchandising formerly occupied by independent stores. Willard L. Thorp, editor of Dun's Review, in an

address before the American Economic Association on December 29, 1938, said:

> "It is easy to summarize the growth of chains up to 1929. The chain store population grew at an amazingly steady rate. Except for the war years, when the rate was appreciably accelerated, the annual increase in the number of chain outlets proceeded neatly along a compound interest course, doubling in number about every six and one-half years. Wearing apparel chains increased more rapidly in number, while grocery chains increased somewhat less rapidly. However, this last fact was more than offset by the extraordinary expansion of Great Atlantic and Pacific Tea Co., which increased from 10.8 per cent of all chain outlets in 1914 to 30.9 per cent at the end of 1925."

Mr. Thorp further made it clear that while the number of chain store outlets did not increase from 1929 to 1937 there was a notable growth in total sales.

During the period from 1929 to 1937, when independent grocers made little advance in sales, nine of the major grocery chains increased their annual sales from 898 million dollars to 1011 million dollars, an increase of 13 per cent. The three leading shoe chains had sales in 1929 of about 55 million dollars, in 1937 of 67 million dollars. Two drug chains advanced from 62 million to 90 million dollars.[1]

Furthermore, the State District Court's findings show a notable growth in the relative sales of chain stores, both state and national, during the years immediately preceding the passing of the Act under review. We quote

[1]Willard Thorp, Editor Dun's Review, From an address entitled, "Changing Distribution Trends," before American Economic Association, Dec. 29, 1938. Printed in American Economic Review, Vol. 29, pp. 75-84, March, 1939. Reprinted in "Chain Stores and Legislation," compiled by Daniel Bloomfield.

from the State District Court's findings of fact (R. 44, 78):

> "The figures for eighteen of the most important lines of retail business in the State show that in 1929 13.5 per cent of the total volume was done by chain stores and 79.3 per cent by single stores, and in 1933 17.8 per cent was done by chain stores and 76.8 per cent by single stores. * * * For the entire United States the figures were: 1929, chains 20 per cent, single stores 77.5 per cent; 1933, chains 25.2 per cent, single stores 71.2 per cent."

The second fact of which this Court should take judicial notice is that chain stores enjoy advantages in merchandising over single stores increasing with increases in total sales. This is supported by the State District Court's findings (R. 45-46, 78-80), in which the court sets forth sixteen such advantages. These were as follows:

> "At the time of and at all times subsequent to the adoption of the act the system of selling goods by the system of chain stores as carried on in Minnesota differed from the system of selling goods in independently owned stores not associated in voluntary chains, in many ways, and had the following advantages over the latter system:
>
> (1) The chain store groups buy goods in larger quantities and thereby secure larger quantity discounts than independent stores.
>
> (2) The chain store groups have greater financial power and thereby are enabled to take advantage of cash discounts in many cases not available to independent stores.
>
> (3) The chain store groups receive substantial special rebates and advertising allowances generally not granted to independent stores.

(4) The chain store groups make use of central warehousing and thereby effect economies in warehousing not available to independent stores.

(5) The chain store groups deliver a considerable portion of their goods from their warehouses to their several stores in full truck lots and thereby effect economies in delivery expense not available to independent stores.

(6) The chain store groups have more abundant capital and therefore have better credit and pay lower interest rates than independent stores.

(7) The chain store groups maintain research divisions which give them advance information about many things useful in buying and selling goods, such as, impending price changes and location of favorable buying markets. They also have greater skill in buying so as to keep the stores stocked with goods suitable in price, style and quality to the purchasing demand.

(8) The chain store groups have a more rapid turnover than independent stores.

(9) The chain store groups, particularly in the larger cities, enjoy advertising advantages over independent stores in being able to advertise sales at several stores in the same advertisement, thereby cutting down the cost of advertising.

(10) The chain store groups use a more or less standardized method of displaying goods which has advantages in advertising and in making sales over the methods employed by independent stores.

(11) The chain store groups equip their stores with standardized equipment and in this manner effect economies in the cost of equipment and in the usefulness of equipment in case a store is discontinued.

(12) The chain store groups maintain stores only in cities and villages that have been proved to be good

centers for the sale of their goods. They do no pioneering as do independent stores.

(13) Each store in a chain store group profits from the good will built up by other stores in the same system.

(14) In the past prior to the passing of the unfair trade practices act in Minnesota in 1937 chain stores have injured competitors and extended their own business by the use of loss leaders.

(15) Chain store groups manufacture and otherwise produce the goods they sell to a far greater extent than do independent stores and thereby effect economies in the cost of these goods.

(16) Chain store groups open stores only in the better locations in each city and thereby enjoy location advantages in selling goods.

Chain store groups enjoy most of the foregoing chain-store advantages over stores which are members of voluntary chains.

Plaintiff enjoyed most of the foregoing chain store advantages over independent stores."

In view of these findings it is clear that chains possess the power to wage an unequal battle in their competition with single stores.

The third fact of which this Court should take judicial notice is that during the past fifteen years there has been a nation-wide movement to restrain the undue expansion of chain stores, resulting in legislation in many states taxing chain stores, and in the passing of an act by Congress designed to restrain unfair trade practices of chain stores, which bears the popular name, Chain Store Act, or Robinson Patman Price Discrimination Act. U. S. C. A. Index, 1939 Cum. An. Pocket Part, p. 4. This Court should further take judicial notice of the fact that this movement

to restrict the excessive growth of chains was particularly active in Minnesota.

Many excellent authorities in the field of merchandising agree that chain store taxes throughout the United States have been laid for the dual purpose of raising revenue and to assist the smaller merchandising units by curbing the undue expansion of chain stores.

On December 2, 1937, Charles F. Phillips, Assistant Professor of Marketing at Colgate University, writes in "Printers Ink":

> "It must be evident to all observers of the retail field that there is in existence a widespread movement having as its aim the providing of security for the 'little fellow.'
>
> "One manifestation of this movement is found in the discriminatory chain-store tax laws now found in seventeen states * * *. While such laws have been passed under a number of pleas, it is obvious that the support which has been given to them by many retail associations has stemmed from the idea that an additional tax placed on the chains would make it just that much easier for the little fellow to compete."[1]

In Bulletin No. 1, Twentieth Century Fund, the conclusion is reached that chain store taxes are levied primarily for police power purposes. We read:

> "Are these taxes levied for the sake of additional revenue? The revenue which they yield, compared with that from other sources, has been of minor importance. To a considerable extent, therefore, the

[1]Article by Charles F. Phillips, in Printers Ink, Dec. 2, 1937, reprinted in "Chain Stores and Legislation," compiled by Daniel Bloomfield. See p. 143 in Bloomfield's book.

objective has been, frankly, not revenue, but business control." [1]

To the same effect is the article by Alfred Buehler, in Journal of Marketing, 1937, where Mr. Buehler says:

"The purpose of chain store taxes is social rather than fiscal." [2]

The fourth fact of which this Court should take judicial notice is that chain stores in many cases have used their power unfairly and oppressively and have conducted their business in such a manner as to cause injury to large numbers of the inhabitants of the state. These unfair practices and these injuries are set forth in finding 11 of the State District Court's first findings, which is as follows:

"The development of chain store groups in Minnesota has had many effects injurious to the general welfare, among the most important of which are the following:

(1) By reason of the advantages of chain stores over independent stores, chain stores throughout Minnesota have gradually been driving independent stores out of business and gradually been taking over a larger and larger portion of the total field of retail sales made within the state.

(2) The development of chain store groups in Minnesota has driven out of business a considerable number of jobbers and wholesale houses within the state and thereby added considerably to unemployment and considerably lessened the value of the taxable property within the state.

(3) It has greatly reduced the number of traveling salesmen and thereby added to unemployment.

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[1] Reprinted in Chain Stores and Legislation, compiled by Daniel Bloomfield. See Bloomfield's Book, p. 100.

[2] The Incidence of Chain Store Taxes, Journal of Marketing for January, 1937. Reprinted in Chain Stores and Legislation, compiled by Daniel Bloomfield, see p. 45 in Bloomfield.

(4) It has caused farmers throughout the state to find a less ready market for their fruit and vegetable products.

(5) Money has been withdrawn from banks in the villages and smaller cities where chain stores have operated and has been concentrated in the larger cities, thereby weakening the banking structure in rural communities.

A chain store group with a comparatively small number of stores is less injurious to the general welfare in the respects set forth in this paragraph than a chain store group with a large number of stores. The tendency is for the injury to the general welfare to increase with an increase in the number of stores in a chain." (R. 508, 530-531)

While these findings were omitted in the State District Court's ultimate findings, uncontradicted evidence lends support to most of them, as is fully shown in the statement of facts. Moreover, the final findings include a finding that "In the past prior to the passing of the unfair trade practices act in Minnesota in 1937 chain stores have injured competitors and extended their own business by the use of loss leaders." (R. 46, 80)

When the Minnesota legislature of 1933 met to consider chain store legislation it was confronted with the facts to which we have just called attention, namely, that the chain stores of the state were rapidly taking over the field formerly occupied by single stores, that these chains enjoyed many substantial merchandising advantages over single stores, had driven many single stores out of business, injured jobbers and wholesale houses and thereby added to unemployment, lessened the value of taxable property in Minnesota, reduced the number of traveling salesmen

and thereby added further to unemployment, and finally, that chain stores have been guilty of unfair methods of competition in driving out their weaker competitors.

With these facts before them the legislature passed the Chain Store Tax Act of 1933.

In the light of the foregoing facts it is inconceivable that the Act could have been passed otherwise than for the dual purpose of raising revenue and to curb the undue expansion of chain stores, and particularly large chains. The chains, and especially the large chains, had the chain store advantages in merchandising which gave them the power to injure weaker competitors. They were expanding rapidly. They used unfair methods of competition. They were causing injury to considerable portions of the people of the state. Moreover, the Act speaks for itself. It is apparent that when a legislature singles out chain stores for the levying of a tax from which individual stores are free it does so for a purpose additional to that of raising revenue. More revenue could have been produced by making the tax applicable to all stores. There could have been no other purpose in singling out chains for taxation and exempting single stores than a motive to curb chains and favor the growth of single stores. Furthermore, when the legislature made the tax progressively higher, and not merely relatively higher, with increases in the size of the chains, it announced more effectively than it could have done by direct statement, a purpose to restrict especially the growth of the larger chains.

Burden of Proof on Plaintiffs.

The burden rests upon plaintiffs to show that there were no police power purposes in the passing of the Act. As was said by this Court in the case of Borden's Farm Products Co. v. Baldwin, 293 U. S. 194, 209:

> "When the classification made by the legislature is called in question, if any state of facts reasonably can be conceived that would sustain it, there is a presumption of the existence of that state of facts, and one who assails the classification must carry the burden of showing by a resort to common knowledge or other matters which may be judicially noticed, or to other legitimate proof, that the action is arbitrary."

It is not difficult to conceive of a state of facts that will sustain the progressive features of the Minnesota chain store tax. They are written so large as to be the common knowledge of every man.

When plaintiffs in their complaint tendered the issue as to whether the Act was passed for police power purposes, they assumed the burden of proving that fact. This burden has not been sustained. Plaintiff presented no evidence showing that the legisfature was not actuated by police power purposes in passing the Act.

Moreover, while respondents deny that the act was passed for a police power purpose they specifically allege that it has a police power effect, by alleging as follows in paragraph IV of their complaints.

> "While the Act purports to impose an occupation or privilege tax, the amount thereof as to plaintiff and many subject thereto is so oppressively excessive as to consume all profits which it is possible to derive from

> the operation of their business in the State, and the Act would therefore render the continued operation of such businesses impossible and would destroy the very occupation and privilege for the enjoyment of which the tax is enacted * * *." (R. 5, 60)

It seems to us that respondents cannot consistently contend both that the Act was not passed to curb the undue expansion of chain stores and also assert that it has that effect. An act must be judged as to its purposes by its effects.

POINT 3.

The classification of chain stores for taxation on the basis of gross sales as provided in the Act is reasonable and valid under the equal protection clause and the due process clause of the Fourteenth Amendment.

Classification for the purpose of taxation is permissible.

If there is any reasonable difference between the classes created they may be taxed on a different basis without violating the equal protection clause of the Federal Constitution. In Brown Foreman Co. v. Kentucky, 217 U. S. 563, 573, this Court says:

> "A very wide discretion must be conceded to the legislative power of the state in the classification of trades, callings, businesses or occupations which may be subject to special forms of regulation or taxation through an excise or license tax. If the taxation is neither capricious nor arbitrary, and rests upon some reasonable consideration of difference or policy, there is no denial of the equal protection of the law."

Capacity to pay taxes increases with the size of the business measured in terms of total sales.

For a long term of years the Harvard University Bureau of Business Research, under the direction of Carl N. Schmalz, assistant professor of marketing in Harvard University, and assistant director of this bureau of research, has made a thorough nation-wide study of the operating experience of department stores.

Bulletin No. 74 of the Harvard University Bureau of Business Research, which is a study of "Operating Expenses of Department Stores and Departmentized Specialty Stores in 1927," is based on reports from 575 department stores and departmentized specialty stores located in forty-seven states and territories of the United States, the District of Columbia and the Dominion of Canada, only ten of the stores, however, being in Canada. The aggregate sales of these stores was $1,214,053,287 in 1927.

The conclusions reached by this study with reference to net gain of stores with sales of less than $1,000,000 and net gain of stores with sales of more than $1,000,000 are as follows, quoting from page 2 of said bulletin:

	Department Stores		Specialty Stores	
	Net sales less than $1,000,000	Net sales over $1,000,000	Net sales less than $1,000,000	Net sales over $1,000,000
Net gain[1] in percentage of net sales	3.3%	4.4%	2.1%	6.1%
Net gain in percentage of net worth	7.2%	10.5%	7.0%	16.0%

We find that the stores with the larger sales have a marked advantage in net gain over the stores with the smaller sales.

The Harvard University Bureau of Business Research has made a study of operating results of department and specialty stores in 1929. This study was based on reports from 698 stores with aggregate sales in 1929 of approximately $1,500,000,000. (Bulletin No. 83, Harvard University Bureau of Business research, pp. 1 and 3)

Table 2 on page 3 of this study shows a progression in net gain for department and specialty stores with increases in volume of sales, whether figured in percentage of net sales or in percentage of net worth, as follows:

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[1]Net gain, as used in these studies, includes all net returns including interest on invested capital. Net profit, on the other hand, includes only the net returns remaining after deducting interest at 6% on invested capital.

	Department Stores'			Specialty Stores'		
	Net sales less than $500,000	Net sales $500,000 to $1,999,000	Net sales $2,000,000 or more	Net sales less than $500,000	Net sales $500,000 to $1,999,000	Net sales $2,000,000 or more
Number of reports	226	168	133	35	29	21
Aggregate sales in thousands	$59,137	$169,606	$1,190,523	$10,031	$27,804	$121,790
Gross margin	29.3%	31.8%	33.6%	32.2%	34.4%	35.8%
Net gain in percentage of net sales	2.3%	3.1%	4.2%	2.8%	3 %	5.2%
Net gain in percentage of net worth	5.7%	7.5%	8.5%	6.5%	11.5%	14 %

With refernce to their merchandising advantage it is significant that the larger stores get a considerably larger gross margin than do the smaller stores.

While this study was nation-wide in scope it is probable that it is fairly representative of operating results in Minnesota.

The larger stores having this notable advantage in merchandising the legislature may properly take note of this fact and levy a heavier gross sales tax on the stores with the larger sales.

This bureau of research has made a comparative study of the operating results of department stores with sales of $500,000 to $2,000,000 and with sales of over $2,000,000. This study covers the years 1927 to 1930 inclusive, is nation-wide in scope and is based on reports from several hundred stores. This study shows a significant trend toward higher percentages of net profit in the stores having larger sales, as is shown by the following excerpt from Table 2 on page 6 of Bulletin No. 85:

ITEMS	Department Stores with Net Sales of from $500,000 to $2,000,000				Department Store with Net Sales of $2,000,000 or more			
	1927	1928	1929	1930	1927	1928	1929	1930
Number of reports	172	116	168	168	98	107	133	151
Gross margin	31.6	31.7	31.8	31.6	33.6	33.8	33.6	33.6
Total expense	31.0	31.4	31.7	33.4	31.4	32.1	32.5	34.1
Net profit or loss	0.6%	0.3%	0.1%	1.8% LOSS	2.2%	1.7%	1.1%	0.5% LOSS
Net other income including interest on capital	2.9%	3.0%	3.0%	2.8%	2.7%	3.2%	3.1%	3.2%
Net gain in percentage of net sales	3.5%	3.3%	3.1%	.0%	4.9%	4.9%	4.2%	2.7%
Net gain in percentage of net worth	8.2	8.7	7.5	.4	11.3	10.1	8.5	4.9

It is apparent that the stores with the larger gross sales make a far greater percentage of net profit: in 1927, 2.2% for the larger and .6% for the smaller, nearly four times as great; in 1928, 1.7% for the larger, .3% for the smaller, nearly six times as great; in 1929, 1.1% for the larger, and .1% for the smaller, eleven times as great; and in 1930 suffering a net loss of only .5% as compared with a net loss of 1.8% for the smaller stores.

The more significant figures, however, are those showing total net gain, including interest on invested capital. In this comparison also there is a striking advantage in favor of the stores with larger gross sales, the comparative advantage in percentage of net gain being as follows:

		Net gain
Year 1927	Stores with $2,000,000 sales or more	4.9%
	Stores with less than $2,000,000 sales	3.5%
Year 1928	Stores with $2,000,000 sales or more	4.9%
	Stores with less than $2,000,000	3.3%
Year 1929	Stores with $2,000,000 sales or more	4.2%
	Stores with less than $2,000,000 sales	3.1%
Year 1930	Stores with $2,000,000 sales or more	2.7%
	Stores with less than $2,000,000 sales	1.0%

Another study of the Harvard University Bureau of Business Research breaks up department stores into nine groups on the basis of amount of total sales and compares operating results. We quote from this study the items comparing net gain in percentage of net sales and net gain in percentage of net worth.

Items	Sales less than $150,000	Sales $150,000 to 300,000	Sales 300,000 to 500,000	Sales 500,000 to 750,000	Sales 750,000 to 1,000,000	Sales 1,000,000 to 2,000,000	Sales 2,000,000 to 4,000,000	Sales 4,000,000 to 10,000,000	Sales over 10,000,000
Number of reports	76	88	81	58	35	75	67	54	30
Net gain in percentage of net sales	2.0%	.2%	.5%	1.3%	0.1%	1.2%	2.7%	2.5%	3.3%
Net gain in percentage of net loss worth	3.3% loss	.1%	1.5%	2.3%	0.6%	3.2%	4.5%	4.6%	6.4%

The advantage of large scale merchandising is shown by the fact that there is a progression in net gain in percentage of total sales from a 2% loss in the group having less than $150,000 in annual sales to a 3.3% gain in the group having sales over $10,000,000. There is also a substantially steady advance in percentage of net gain from the smaller to the larger sales groups.

Bulletin No. 78 of this bureau is a study of chain store operating results of 162 department stores with net sales of over $1,000,000 each. The study was made for the year 1928 and is based on the reports of department stores in forty-seven of the forty-eight states, eleven being Minnesota stores. Table 8 of this bulletin (p. (11)) shows progressive increases in the rate of net profit of these stores in relation to volume of sales, as follows:

55 stores in one to two million dollar class... .9%
42 stores in two to four million dollar class...1.1%
40 stores in four to ten million dollar class...1.6%
25 stores in over ten million dollar class...2.8%

The progressive increase, with increase in sales volume, in net gain in percentage of net sales is equally striking, namely:

55 stores in one to two million dollar class...3.8%
42 stores in two to four million dollar class...4.5%
40 stores in four to ten million dollar class...4.8%
25 stores in over ten million dollar class...5.8%

A similar showing results when stating the comparison in percentage of net worth, namely:

55 stores in one to two million dollar class...9.7%
42 stores in two to four million dollar class...9.2%
40 stores in four to ten million dollar class...9.8%
25 stores in over ten million dollar class..12.1%

Commenting on the results of another study of department store merchandising in Bulletin 78 of the Harvard Bureau of Business Research, the editor says (page 43):

> "Despite higher total expense, the large stores typically had a much better net profit than did the small stores, because of much higher gross margin."

And on page 47 we find this conclusion reached:

> "As between department and specialty stores, those with sales over $1,000,000 consistently showed higher net profit, higher net gain, and faster stock turn, than did those with sales of less than $1,000,000."

In view of the fact that it is possible to quote statistics from the depression years which do not fully agree with the findings for normal years the study made in Bulletin 100 of the Harvard Bureau of Business Research is significant. In this study of "Operating Results of Department and Specialty Stores for 1935," Professor Schmalz found that the large department stores of the United States again showed the higher percentage earnings which they generally had reported prior to 1933 (p. 1). Commenting on the results shown by his study Professor Schmalz says (p. 11):

> "In view of these circumstances the most significant fact disclosed by Table 10 is the fact that the 1935 earnings for department stores with sales of less than $500,000 were noticeably poorer than those for me-

dium-size and large stores. Thus in 1935 there was a return to the relationships prevailing before 1933 when the rate of profit tended to be highest for the largest stores and smallest for the smallest stores. Apparently the relatively good showings of the small stores in 1933 and 1934 were due, as also was suggested in Bulletin 96, to some temporary tendency for the forces of recovery to benefit the smaller stores more, or earlier, than the large ones."

It is significant that this study finds, not merely that the larger department stores have larger net earnings than the smaller ones, but that the rate of profit tended to be highest for the largest stores and smallest for the smallest stores.

The following quotation from Bulletin 85, page 8, is to the same effect:

"It is quite clear that the larger stores operated on a distinctly more satisfactory basis than the smaller stores, and that success as measured by earnings varied directly with size."

The Harvard University Bureau of Business Research has also made a study of the operating experience of food chains in 1934. This study was based on the experience of 21,000 stores operated by 66 chains which made sales in 1934 of about $960,000,000. With reference to the rate of profit of food chains with large sales and food chains with small sales, Carl N. Schmalz, Assistant Professor of Marketing and the director of this study, makes the following comment:

"From these tables it is clear that the high-profit * * * firms among the reporting food chains, as contrasted with other chains having lower net profit rates,

showed some tendency to be larger as regards total sales * * *."[1]

It is apparent that if the rate of net profit of the chains with the larger sales is higher the total net profit of such chains must be a great deal higher.

The foregoing studies are the more significant because one of respondents is operating a department store chain and the other is operating a food chain.

This Court may take judicial notice of the foregoing facts, for they are matters of common knowledge.

Slight differences sufficient to sustain classification.

In Rast v. Van Dieman, 240 U. S. 342, this Court upheld a Florida act imposing on each person giving away redeemable trading stamps in connection with the sale of merchandise a state license tax of $500 and a $250 county tax in each county in which the business was conducted. This Court said:

> "It is established that a distinction in legislation is not arbitrary, if any state of facts reasonably can be conceived to sustain it."

Similarly this Court has sustained differences in taxation based upon location of a warehouse, whether on or off the right-of-way of a railroad, Cargill Co. v. Minnesota, 180 U. S. 452; differences based on the number of women employed by a laundry, Quong Wing v. Kirkendall, 223 U. S. 59; differences based on the character of the loans made by bankers, Bradley v. Richmond, 227 U. S. 477; and dif-

[1] Bulletin No. 99, Harvard University Bureau of Business Research, pp. 1 and 9.

ferences based on the price of admission charged by theatres, Metropolis Theatre Co. v. Chicago, 228 U. S. 61. It is apparent that each of these classifications was based upon comparatively slight differences between class and class.

The Supreme Court of Minnesota likewise has upheld classification based on slight differences as a proper basis for a difference in the amount of tax, holding valid the preferred classification of unplatted real estate over platted real estate, State ex rel. Chase v. Minnesota Tax Commission, 135 Minn. 205, 160 N. W. 498; recognizing a difference between trucks operating on regular time and route schedules and trucks not following such schedules, Raymond v. Holm, 165 Minn. 215, 206 N. W. 166; upholding preferred classification of real estate for taxation on the basis of use for a homestead and subclassification on the basis of value, the preferred treatment stopping at $4000, Apartment Operators Association v. City of Minneapolis, 191 Minn. 365, 254 N. W. 443; and sustaining exemptions in an income tax depending on marital status and number of dependent children, and upholding subclassification and graduation of the taxes based on amount of income, Reed v. Bjornson, 191 Minn. 254, 253 N. W. 102.

Cases in the Supreme Court of the United States holding graduated chain store taxes valid.

During the past nine years this Court has upheld the tax acts of five states classifying chain stores as a separate group for tax purposes and in four of the five states, subclassifying them for the imposition of progressively heavier taxes on the larger chains. The acts of these four states made the number of stores in the chain the measuring rod in determining the size of the chain.

In upholding the chain store tax acts of Indiana, State Board of Tax Commissioners v. Jackson, 283 U. S. 527; of North Carolina, Great Atlantic and Pacific Tea Company v. Maxwell, 284 U. S. 575; of Florida, Liggett Co. v. Lee, 288 U. S. 517; of West Virginia, Fox v. Standard Oil Co., 294 U. S. 87; and of Louisiana, Great Atlantic and Pacific Tea Company v. Grosjean, 301 U. S. 412, this Court laid emphasis upon the following propositions:

1. Classification of businesses for purposes of taxation is permissible even if the difference between the subjects taxed is not great. The legislature must be given wide discretion in classification. In Liggett Co. v. Lee, supra, the Court said (p. 533):

> "that the difference between the subjects taxed need not be great; and that if any reasonable distinction can be found the duty of the court is to sustain the classification embodied in the law."

See also Tax Commissioners v. Jackson, supra, p. 537.

2. The difference between the chain-store method of merchandising and the single-store method and the advantages of the former are sufficient to justify separate classification and a tax on the chain store not imposed upon the single store or a higher tax on the former than on the latter. Tax Commissioners v. Jackson, supra, 541.

3. Increased chain store advantages resulting from adding units to the chain justify subclassification and the imposition of a tax progressively higher per unit as the number of units increases.

In Fox v. Standard Oil Co., supra, this Court said (p. 100):

> "A chain, as we have seen, is a distinctive business species, with its own capacities and functions. Broadly speaking its opportunities and powers become greater with the number of component links; and the greater they become, the more far-reaching are the consequences, both social and economic. For that reason the state may tax the large chains more heavily than the small ones, and upon a graduated basis . . . ."

4. A chain store tax may be used for the police power purpose of restricting the inordinate growth of chain stores and thereby promoting the development of other forms of merchandising.

In Fox v. Standard Oil Co., supra, this Court, speaking through Mr. Justice Cardozo, said (p. 100):

"Not only may it do this (tax the large chains more heavily than the small ones), but it may make the tax so heavy as to discourage multiplication of the units to an extent believed to be inordinate, and by the incidence of the burden develop other forms of industry."

In Pacific Fisheries v. Alaska, 269 U. S. 269, a statute passed by the legislature of Alaska, levying a graduated tax on the canning of salmon by fish canneries, was under attack on the ground that it violated the due process clause of the Fifth Amendment. This act levied a flat tax of ten cents per case on all salmon and an additional tax on certain kinds of salmon as follows:

10,000 to 25,000 cases, five cents per case;
25,000 to 40,000 cases, ten cents per case;
40,000 to 50,000 cases, fifteen cents per case;
over 50,000 cases, twenty cents per case.

This tax is progressive, on the basis of quantity, exactly as the gross sales portion of the Minnesota tax is progressive, on the basis of quantity. Each tax places a progressively heavier burden on the larger business. There can be no possible difference in principle between them by reason of the fact that one is a tax on the canning of a commodity, canned for sale, and the other a tax on the sale of commodities.

It is of course, elementary, that the restrictive effect of the due process clause of the Fifth Amendment as applied to the federal government and the territories is the same as the restrictive effect of the same clause of the Fourteenth Amendment as applied to the states.

Answering the contention in this case that the progressive character of the tax discriminated against the larger canneries Mr. Justice Holmes said (p. 278):

> "It is much pressed that the tax discriminates against large canneries in favor of small ones—this especially contravening the due process clause of the Fifth Amendment and denying due process of law. Classification of taxes by the amount of the corpus taxed has been sustained in various connections heretofore. By way of specific answer it is pointed out by the Attorney General of Alaska that the size of the run of salmon cannot be foreseen; that a cannery must be prepared to its fullest capacity; that there will always be an irreducible minimum of expense to be borne whatever the size of the pack; that therefore a small pack may mean a loss and a larger one a profit, and that on these considerations the law may justly attempt to proportion the tax to the probable gains. The inequalities of the tax are based upon intelligible grounds of policy and cannot be said to deny the petitioner its constitutional rights."

Similar considerations should sustain the validity of the Minnesota progressive chain store tax.

The chain store taxes sustained by the Supreme Court of the United States the same in principle as the Minnesota tax. Operation of Minnesota tax more nearly equitable than taxes based only on number of stores.

In four of the five chain store tax cases referred to above (all but the North Carolina case) the tax under consideration was graduated in such a way as to become progressively higher per unit as the number of units increased.

The taxes passed upon in these four cases differed from the Minnesota tax in form in that they were levied on the basis of the number of stores in the chain, whereas the Minnesota tax is composite, consisting of one portion levied on the basis of the number of stores in the chain and of one portion levied on the basis of the total sales made by the chain. The Minnesota tax is like the taxes passed upon in these four cases in that it becomes progressively heavier as the size of the chain increases.

We contend that there is no difference in principle between a progressive chain store tax based on the number of stores as the measuring rod of chain store advantage and chain store power to cause social and economic injury and a chain store tax based on two measuring rods, number of stores and total sales. This contention must be valid unless there are arbitrary qualities in the second measuring rod, total sales, not found in the first. We believe we can show from the evidence in these cases, not merely that the second measuring rod is as fair as the first, but that the combined effect of the two measures results in a tax more nearly equitable than the tax based only on number of stores.

We can make no more pertinent comparison of the two kinds of taxes than by noting the results of applying them to the two respondents in these cases. We give below the amount of gross sales, the number of stores, the amount of the specific tax, the amount of the gross sales tax, and the amount of the composite tax of the two respondents for the year 1934.

	Gross Sales	No. of Stores	Specific Tax	Gross Sales Tax	Composite Tax
Allied Stores	$9,714,374	2	5	$40,902	$40,907
National Tea.	$5,288,845	154	$18,520	$45,222	$63,742

These figures speak for themselves. The amount of the specific tax on Allied Stores Corporation is to the amount of the specific tax on National Tea Company as 1 to 3704, the amount of the composite tax, approximately, as 41 to 64. National Tea Company, with annual gross sales in Minnesota of a little over $5,000,000, cannot enjoy chain store advantages or chain store power to cause social and economic injuries 3704 times as great as Allied Stores Corporation, with annual sales of nearly $10,000,000. But, in view of the fact that National Tea Company has so many outlets, and Allied Stores Corporation only two, the proportion of 64 to 41 is presumably not far from accurate.

An examination of the tax levy on more than 300 chains which do business in Minnesota, as shown by plaintiffs' Exhibit A (R. 589-596), will show that generally the composite tax, which the State District Court and the State Supreme Court condemn, operates more nearly equitably than the specific tax, which these courts uphold.

We compare next the tax on W. T. Grant Co., a limited department chain with total sales in 1934 of $1,347,107, and L. P. Jesperson, a general merchandise chain with total sales in 1934 of $29,317.

	Total Sales in 1934	No. of Stores	Specific Tax	Gross Sales Tax	Composite Tax
W. T. Grant Co.	$1,347,107	3	$10	$1,257.12	$1,267.12
L. P. Jesperon	29,317	3	10	10.01	22.01

The sales of Jesperson are only a little more than two per cent of the sales of W. T. Grant Co. Yet the specific tax is $10 for each chain. Obviously, the composite tax of $1267.12 for the Grant Co. and $22.01 for Jesperson comes closer to representing their relative chain store advantages and their relative power to injure weaker competitors than the specific tax of $10 on each.

The greater fairness of the composite tax is equally apparent in the following comparison of the 1934 tax on S. S. Kresge Co. and Fanny Farmer Candy Stores.

	Total Sales in 1934	No. of Stores	Specific Tax	Gross Sales Tax	Composite Tax
S. S. Kresge Co.	2,832,409	14	105	13,409.54	13,514.54
Fany Farmer Candy Shops	341,568	15	120	279.60	399.60

S. S. Kresge Co., with eight times as large total sales from its fourteen stores as Fanny Farmer Candy Shops had from its fifteen stores, paid $105 specific tax as compared with Fanny Farmer's $120. The composite tax, which was $13,514.54 for Kresge and $399.60 for Fanny Farmer is obviously a fairer apportionment of taxes.

The relatively greater fairness of the composite tax as compared with the specific tax when applied on the one

hand to chains with comparatively few stores but large sales and on the other to chains with few stores and small sales is convincingly brought out by comparing all Minnesota chains in the first class with sales of more than $1,000,000 and all chains in the second class with sales of under $25,000.

We present first a summary of the taxes paid in 1934 by chains large in total sales but small in number of stores:

Name of Chain	No. of Stores	Total Sales in 1934	Specific Tax	Gross Sales Tax	Composite Tax
Allied Stores Corporation	2	$ 9,714,374	$ 5	$ 40,902.38	$ 40,907.38
Grand Union Tea Co.	3	1,347,107	10	1,257.12	1,267.12
S. S. Kresge Co.	14	2,832,409	105	13,409.54	13,514.54
Montgomery Ward & Co.	16	6,777,204	135	29,138.12	29,273.12
Quality Food Stores, Inc.	15	1,334,402	120	4,735.70	4,855.70
Rothschild	4	2,997,814	15	6,947.99	6,962.99
M. W. Savage Co.	9	1,039,721	40	160.64	200.64
C. Thomas Stores	23	1,887,232	300	10,860.67	11,060.67
Walgreens Co.	17	2,261,573	150	13,798.98	13,948.98
Witts Market House	4	2,506,292	15	659.33	674.33
	107	$31,698,128	$895	$121,870.47	$122,665.47

The total sales of Montgomery Ward & Co. reached the vast total of $6,777,204, but as there were only sixteen stores the specific tax was only $135, an amount utterly inconsequential in equalizing the advantages of this powerful chain against its small competitors. S. S. Kresge Co. made sales of $2,832,409. Its specific tax was $105 and its composite tax $13,514.54. It would have been impossible to levy a specific tax on any of these corporations approximating the amount of the composite tax without at the same time destroying the chains with relatively small sales per store.

The total sales in 1934 of these ten chains was $31,698,132. The average sale per store was $296,244. The stores being few the total specific tax paid by these ten chains was only $895. The total sales being large, the total gross sales tax was $122,665.47. The average specific tax amounted to $8.36 per store. The average composite tax amounted to about $1155 per store. On the average these chains paid a specific tax of $1.00 for each $35,419 in sales. On the other hand, they paid a composite tax of $1.00 for each $258 in sales, or about ¼ per cent. It is apparent that the specific tax on these stores could have substantially no effect in accomplishing the purposes of the act, whereas the effect of the composite tax would be substantial.

At the other end of the size range we find eighteen Minnesota chains having sales in 1934 below $25,000. These were the following:

Name of Chain	No. of Stores	Total Sales in 1934	Specific Tax	Gross Sales Tax	Composite Tax
C. J. and H. M. Anderson	2	$ 18,088	$ 5	$ 2.86	$ 7.86
Eastern Minn. Power Co.	5	12,609	20	4.46	24.46
A. & J. Engel, Inc.	2	10,383	5	2.14	7.14
Fuller Brush Co.	2	4,394	5	.65	5.65
Gray Shoppe	2	21,973	5	4.53	9.53
Hoover Co.	3	22,214	10	3.78	13.78
Independent Gro. & Meat Co.	2	5,087	5	.51	5.51
Alfred J. Krank	2	22,353	5	5.81	10.81
Marigold Dairies	5	7,609	20	1.71	21.71
Minnesota Utilities Co.	2	24,623	0	8.54	8.54
North American Creamery Co.	2	17,189	5	3.72	8.72
Root River Power & Light Co.	2	6,125	5	.74	5.74
Sigmond & Sons, Inc.	2	20,425	5	2,61	7.61
Smith-Burd Co.	2	19,967	5	2.99	7.99
Spalding Bros.	2	24,141	5	2.62	7.62
C. Thomas Markets	3	17,192	10	1.00	11.00
Toledo Scales Co.	2	24,113	5	2.64	7.64
United Mercantile Stores	2	23,472	5	4.62	9.62
Total	44	$301,957	$125	$55.93	$180.93

The total sales during 1934 of the forty-four stores of these eighteen chains was $301,957. The average sale per store was $6,862. The total amount of specific taxes paid by these eighteen chains was $125. The total amount of composite taxes paid was $180.93. The average specific tax amounted to $2.84 per store. The average composite tax amounted to $4.11. On an average these chains paid a specific tax of $1.00 for each $2,416 in sales and a composite tax of $1.00 for each $1,669 in sales.

Comparing the results of applying the specific tax and the composite tax to these two groups of chains we find that the specific tax results in a tax of $2.84 per store on the small chains and $8.36 per store on the large chains, whereas the composite tax results in a tax of $3.89 per store on the small chains and $1,155 per store on the large chains. Looked at from the point of view of comparative sales we find the specific tax results in an average tax of $1.00 for each $2,416 in sales of the small chains and a tax of $1.00 for each $35,419 in sales on the large chains. The incidence of the specific tax measured in total sales is nearly fifteeen times as heavy on the small chains as on the large. The composite tax on the small chains results in an average tax of $1.00 for each $1,669 in sales and in an average tax on the large chains of $1.00 for each $258 in sales. On the basis of total sales the incidence of the composite tax is more than six times as heavy on the large chains as on the small ones.

The equitable character of the composite tax on chain stores can best be shown by classifying the 272 chains that made complete reports in 1934 in the eleven classes set up by Section 2(b) of the Act, namely, chains with

total sales of less than $100,000, chains with total sales of $100,000 to $200,000, and so on up to chains with sales of over $1,000,000; and noting the incidence of the specific tax as compared with the incidence of the composite tax. The following table has been compiled from Plaintiffs' Exhibit A and includes all the chains reporting in 1934 that made complete reports.

SUMMARY OF TAXES PAID BY MINNESOTA CHAINS REPORTING IN 1934.

Year—1934	No. of Chains	No. of Stores Taxable	Total Sales	Taxable Sales	Total Specific Tax	Total Sales Tax	Total Composite Tax	Percentage of Specific Tax to Total Sales	Percentage of Composite Tax to Total Sales
Chains with gross sales of less than $100,000	108	168	$ 5,742,006	$ 2,383,202	$ 880	$ 1,209.01	$ 2,089.01	.000153	.000363
Chains with gross sales of $100,000 to $200,000	74	221	10,617,949	5,243,997	1,275	2,806.98	4,081.98	.0001201	.000384
Chains with gross sales of $200,000 to $300,000	26	80	6,261,459	2,981,241	470	1,852.08	2,322.08	.000075	.0003708
Chains with gross sales of $300,000 to $400,000	18	75	6,243,842	3,098,578	555	2,600.75	3,155.75	.0000888	.000505
Chains with gross sales of $400,000 to $500,000	12	101	5,432,099	3,344,464	1,245	3,567.02	4,812.02	.000229	.0008853
Chains with gross sales of $500,000 to $600,000	4	32	2,147,062	1,555,708	210	1,936.74	2,146.74	.0000978	.0009998
Chains with gross sales of $600,000 to $700,000	3	17	1,937,864	1,108,516	85	1,735.45	1,820.45	.0000438	.0009395
Chains with gross sales of $700,000 to $800,000	5	48	4,522,359	2,672,678	470	3,877.08	4,347.08	.0001039	.0009612
Chains with gross sales of $800,000 to $900,000	2	9	1,632,907	1,109,734	45	1,562.55	1,607.55	.00002757	.0009844
Chains with gross sales of $900,000 to $1,000,000	5	16	4,679,498	1,312,938	80	1,637.84	1,717.84	.00001709	.0003671
Chains with gross sales of over $1,000,000	15	471	54,556,506	39,066,434	32,765	297,540.70	330,305.70	.00060057	.006054
Grand Total	272	1238	$103,774,789	$63,877,490	$38,080	$320,326.20	$358,406.20	.0003086	.003453

It is worthy of note that the group of 108 chains with total sales of less than $100,000 each, have the lowest percentage of composite tax to total sales, namely, .000363, which is 363/10000 of one cent per dollar of sales. From here on there is, with one exception, a substantially steady rise in the rate of the tax as the chains grow larger in total sales, to the highest group, chains with sales of over $1,000,000 each, where the percentage is .006054, or 6054/10000 of a cent per dollar of sales.

The only substantial exception to the progression in the weight of the tax is found in the group with sales of $900,000 to $1,000,000, which is accounted for mainly by the fact that the law exempts from the tax on each chain the sales of one store of the owner's selection. Each of the five chains of this group had one store with very large sales. The result was that the exempt sales were very large and the taxable sales correspondingly small. It is further accounted for by the fact that each of the five chains in this group had only a few stores and hence the specific tax was very small.

There is, on the other hand, little relationship between the percentage of the specific tax and the total sales.

It seems apparent that the substantially steady progression toward a heavier tax per unit of sale of the composite tax is closely in line with the purpose of the act, to curb the undue expansion of all chain stores.

The specific portion of the tax curbs the undue expansion of chain stores large in number of stores. The composite tax curbs the undue expansion of all chains whether large in number of stores or large merely in total sales.

The foregoing facts show that the composite tax operates equitably. It imposes a heavier burden per dollar unit of

sale on the large chains than on the small and thereby tends to achieve the purpose of the act, to equalize the merchandising advantage of the large chain over the small chain.

Minnesota tax with its dual measure of size sustainable for the same reasons as chain store taxes based only on number of stores.

Every argument that can be presented to sustain the validity of a tax on chain stores graduated upward according to the number of stores is even more persuasive toward sustaining the validity of a tax graduated upward according to a dual measure, number of stores and gross sales. The chain store advantages found by the State District Court increase to a greater extent for each store added to a chain if that store has large gross sales than if its gross sales are small. In order to show that this is true let us consider one by one a number of these chain store advantages and its relation to increases in the total sales of the chain.

Economies in warehousing available to the larger chains.

One of the advantages of chain store merchandising found by the State District Court is large scale buying (R. 45, 78). This is an advantage which increases with the volume of purchase and becomes especially marked when the purchaser can take the carload for the unit and thereby take advantage of lower carload-lot prices. Obviously a chain of five stores and total annual sales of $100,000, while profiting to some extent by chain store advantages,

cannot profit by them to the same extent as if the average store in the chain had gross sales of $100,000 and the chain an aggregate of $500,000.

O. H. Landin, one of the witnesses for the State, was unusually well qualified to testify with reference to the comparative advantages of large and small scale buying in the grocery field. He had been in the grocery business for about thirty years, as an independent grocer operating his own store, as clerk, store manager and district manager in Chicago for the National Tea Company of Illinois, then for fifteen years successively as district manager, vice president, and general manager of the Minneapolis branch of the National Tea Company of Delaware, one of the respondents here. During most of this time he did all of the buying for the company. During this period he saw this chain grow from a chain of twelve or thirteen stores to a chain of about 215 stores. After leaving this company in 1933 he was, up to the time of trial, about two years, the owner and operator of a small food chain (R. 314-316). Mr. Landin, accordingly, had intimate knowledge from first hand experience of the business of the independent grocery chain, the small chain, the medium chain and the large chain, and fifteen years intimate acquaintance with the business of one of respondents. He knew, as few men know, the business advantages of chain store merchandising, particularly in the grocery field, and especially the enormous business advantages enjoyed by one of these respondents.

In his testimony Mr. Landin points out that the National Tea Company buys sugar in carload lots direct from the refiners and thereby effects three savings, below what is available to the small buyer: (1) a quantity discount,

which gives his company the jobber's price; (2) a special rebate, at times, below the usual price in carload lots; and (3) the privilege of "booking" the sugar many weeks before delivery, payment to be made at the time of delivery. He testifies that this "booking" privilege, that is, the privilege of ordering in advance without payment until delivery, is available only to carload lot buyers and that it is valuable because, on a rising market, a buyer with advance information of impending advances can buy before the advance takes place without tying up any money until the time of delivery (R. 317-318).

Purchase of soap in carload lots effects a saving of ten to twenty cents per box, amounting to a discount of from five to eight per cent (R. 318).

Flour is sometimes purchased in quantities as large as 10,000 to 20,000 barrels. This brings not only a quantity discount, but special bargain prices not available to small buyers (R. 319, 321).

Mr. Landin testifies that the National Tea Company maintains a research department and that the central office would inform him when it seemed advisable to "book" for future delivery (R. 317-318) and also when there was danger that the price of various commodities would fall, enabling him to put on special stock-reduction sales (R. 335). It is obvious that a chain with small gross sales cannot afford to maintain such a research department.

With reference to the purchase of coffee Mr. Landin states that the Great Atlantic and Pacific Tea Company, which is about ten times as large as the National Tea Company of Illinois, can buy coffee at even lower prices than the latter company because it maintains representatives at

places where coffee is grown and even has its own plantations, thereby effecting economies not open to a moderately large chain like the National Tea Company (R. 328).

Mr. Landin testifies that as purchaser for the National Tea Company he secured discounts on peaches, over smaller purchasers, of twenty-five to fifty cents per case. At times he secured still larger discounts by purchasing five carloads at a time. In answer to the question:

> "Would it (the amount of special rebates) depend on the amount of the purchase?"

Mr. Landin answered:

> "Yes, the larger the purchase, the better the deal you would be able to make" (R. 333-334).

Mr. Landin testifies that the National Tea Company receives special rebates from many companies by reason of large scale purchases and that the big chains customarily receive extra allowances, but the small buyers, including himself as the operator of a small chain, do not (R. 332).

Among the companies from which the National Tea Company got special rebates by reason of large scale purchases were Hills Brothers (R. 332, 565); Diamond Match Company (R. 369, 569); Wrigley Company and Lipton Co., Inc. (R. 371, 385, 569, 573-574); Kraft Phenix Cheese Company (R. 372, 570); Fleischmann Company (R. 381-382, 570, 572); Scott Paper Company (R. 384, 573); Campfire Corporation (R. 385,575); Pompeian Romanza Company (R. 386, 575); Fuji Trading Company, Washburn Crosby Company, Wheatena Company and Price Flavoring Extract Company (R. 388, 576); and Kraft Cheese Company (R. 389, 576-577).

An examination of the foregoing exhibits will show that they are substantial in amount, as the following tabulation will show.

No. of Exhibit	Name of Company	Amount paid special rebate for quantity purchase	No. of months covered	Year
3	Hills Brothers	$ 30.19	3	1931
15	Hills Brothers	17.25	3	1929
8	Diamond Match Co.	753.55	3	1929
9	Wrigley Company	26.95	1	1931
14	Wrigley Company	26.95	1	1931
14a	Wrigley Company	33.69	1	1931
14b	Wrigley Company	33.69	1	1931
9	Lipton Company	248.19	12	1930
10	Kraft Phenix Cheese	244.28	2	1931
12	Fleischmann Co.	144.37	1	1929
12a	Fleischmann Co.	118.73	1	1929
12b	Fleischmann Co.	146.73	1	1931
12c	Fleischmann Co.	134.88	1	1931
12d	Fleischmann Co.	121.78	1	1931
17	Fleischmann Co.	142.74	1	1930
13	Scott Paper Co.	9.19	1	1931
15	Campfire Corporation	7.13	1	1929
15	John F. Jelke Co.	15.75	1	1929
16	Pompeian Romanza Co.	65.69	6	1929
17	Fuji Trading Co.	19.00	8	1930
17	Price Flavoring Extract Co.	11.62	3	1930
17	Washburn Crosby Co.	66.78	3	1930
18	Washburn Crosby Co.	50.85	1	1930
18	Kraft Cheese Co.	253.05	2	1930

The Diamond Match Company paid quantity purchase rebates of $753.55 for a three-month period; the Fleischmann Co. monthly rebates during various months in 1929, 1930, and 1931 averaging about $135 per month and the Wrigley Company monthly rebates of from $26.95 to $33.69 per month.

Hills Brothers percentage of rebate for quantity purchases, as shown by Defendant's Exhibit 3, was 2½ per cent; Kraft Phenix Cheese Company, 3 per cent; Scott Paper Co., as shown by Exhibit 13, 5 per cent; Pompeian Romanza Company, 5 per cent. The rate of rebate for the other companies does not appear from the testimony. When we consider that a four per cent net profit on each tournover of stock represents about an average rate for chain stores, it is apparent how important can be quantity purchase rebates ranging as high as five per cent.

Mr. Landin testified that the National Tea Company received quantity rebates on about one half of the good purchased, figured on the basis of the cost of such goods, and that these were in addition to the usual quantity discounts (R. 393-394).

Joseph Strong, who had had forty years experience in the millinery business, in manufacturing, jobbing and retail, and thirty-five years experience as president and manager of the Strong Warner chain of millinery stores, and as buyer for the firm (R. 458-459), which at one time had 107 outlets (R. 460), testified that he effected large savings by making large purchases. He cited one case where he secured a reduction in the price of hats from $30 per dozen to $21 per dozen by purchasing 2,000 dozen hats in one order, a saving of $18,000. Such a purchase would, of

course, have been impossible to any retailer except a large millinery chain, for no other could dispose of such a number (R. 459-460). Testifying to the matter of progressively better bargains with larger purchases Mr. Strong testified as follows:

"Q. Did you find in connection with your quantity buying that you could get progressively greater discounts as you increased the quantity?

A. We didn't call them discounts but cut prices, it was a matter of bargaining.

Q. Could you get progressively better bargains if you increased the quantity?

A. If you were smart enough you could" (R. 460).

The importance of this testimony is that it shows that the large millinery chain, by reason of its power to make large scale purchases, enjoys an advantage over the small chain and the independent and that the advantage tends to become greater with an increase in the gross sales of the chain.

James Bailey, one of defendant's witnesses, had at the time of the trial been secretary of the St. Paul Retail Grocers Association for five years and, before that, had been salesman for a soap factory for thirty years and a director of the company for ten years (R. 454). He testified that he sold soap mainly to jobbers, sold soap directly to no independent stores and to no small chain groups, but did sell to two large grocery chains, the Red Owl and the National Tea Company. The National Tea Company purchased mainly in carload lots. The price advantage of the large grocery chain in the purchase of soap is shown by the following testimony of Mr. Bailey:

"Q. What was the price within limits?

A. It was changing all the time on the market. You got 10% off for the $4.00 box and then a discount over that was the jobber's list.

Q. So there was a quantity discount of a little more than 50¢ per box?

A. Yes.

Q. But the big grocery chains could buy from you direct?

A. Yes.

Q. And the independents could not get that because they could not purchase from you direct?

A. No." (R. 456)

The significant thing about this testimony is the fact that it shows that the National Tea Company could purchase soap in carload lots from a soap manufacturer and thereby secure a large quantity discount not open to the single store or the small chain. Thereby the National Tea Company by reason of its large sale of soap secured a lower price than the small dealer. It was the size of the chain measured in terms of gross sales that gave it this buying advantage.

Economies in advertising available to the larger chains.

Mr. Landin testifies that he secured very economical advertising because he could use one advertisement for all the stores in Minneapolis and run that in the Minneapolis newspapers, and similarly one for St. Paul; that newspaper advertising is far more efficient than handbills and that the independent merchant cannot use the newspaper because such advertising is too expensive for a single store (R. 336).

Economies in financing available to the larger chains.

Mr. Landin's testimony indicates that he effected considerable savings for his company by borrowing money from the parent company, the National Tea Company of Illinois, at from one to two per cent less than he could borrow it for at the bank. At one time he borrowed $25,000 from this source (R. 336-337, 566).

Howard R. Malcolm, one of the plaintiffs' witnesses, treasurer-comptroller of L. S. Donaldson Company, one of the two Minnesota stores of Allied Stores Corporation, a respondent here, testifies that in 1935 his company borrowed $2,748,883.03 from the parent company, $2,600,000 at one fourth per cent interest, and the balance at five per cent, and that earlier, when interest rates were higher, it had borrowed from banks at from four and one hal. to six per cent: This resulted in considerable saving to the L. S. Donaldson Company (R. 338-339). It is probable that the saving in interest on this item alone, resulting from a connection with a powerful chain, was more than the total composite tax levied on this chain. And yet this corporation comes into court to complain that the tax is excessive.

It appears from Mr. Landin's testimony that the National Tea Company could always get enough money to take cash discounts on purchases and buy in large quantities and get quantity discounts (R. 339-340).

Economies in warehousing available to the larger chains.

Mr. Landin's testimony shows that the National Tea Company effects economies in distribution by its system of central warehousing and that this method of warehousing is

not open to small grocery chains. We quote from his testimony:

"Q. Will you explain the method by which your company provided warehouse facilities?

A. We had our own warehouse, we owned that.

Q. How many did you have?

A. Just one for Minneapolis and St. Paul and that supplied the country stores, too, outside of Duluth. We have a small one in Duluth.

Q. How many did you maintain in the state?

A. Just the two.

Q. How many warehouses did you maintain for the four states?

A. Just two.

Q. How would the cost of providing a warehouse in this manner compare with the cost of providing it for a small chain, we will say such a chain as you now have?

A. I have no warehouse myself.

Q. Why do you not maintain warehouse facilities now?

A. I haven't volume enough, it wouldn't pay" (R. 340-341).

Advantage of large chains in advertising rebates.

Mr. Landin testified that many companies selling goods to National Tea Company granted the company advertising allowances, or rebates, to compensate it for money spent in advertising the goods of the companies granting such rebates. His testimony showed that independent dealers and small chains could not get such rebates and that such rebates increased in proportion to purchase with the larger purchases (R. 350-351). A portion of Mr. Landin's testimony follows:

"Q. Whether or not you know from your experience as manager of chain stores of various sizes, whether the advertising rebate tends to increase with the volume of purchase. Do you get a larger rebate when you buy in larger quantities?

A. Yes.

Q. Larger in proportion to purchases?

A. Yes.

Q. Did the National Tea Company have an advantage in doing business over the small chain and the independent store by reason of the fact that it could get this advertising rebate on account of its large purchases?

A. Yes" (R. 851).

Advantage of the large chains over the small chains in delivering goods to its stores.

Mr. Landin states that the National Tea Company, which operated stores in four states, Minnesota, Wisconsin, North Dakota and South Dakota, delivers merchandise from its two central warehouses, one in Minneapolis and one in Duluth, to all of these stores, each truck load taking care of the needs of its stores in from two to five towns. In this way the truck could carry a full load. Coming back the truck would carry a full load of eggs and empty crates and boxes. On the other hand, the rural district independents get most of their merchandise by railroad, a more expensive method. Mr. Landin testifies that this gives the National Tea Company an advantage over its small chain competitors (R. 352-353).

Volume of sales is what all merchants aim to reach. It is the usual unit of measure in describing the size of a business. Only with large volume of sales is a large profit pos-

sible. It seems extraordinary that when the tax levying authority seizes upon this as one unit of measuring the amount of a chain store tax levy the courts shall find it to be arbitrary and invalid.

The same comparison could be pursued through all the sixteen merchandising advantages enjoyed by chain organizations over single stores and by the large chain, in number of stores, over the small chain, and in nearly every case it could be shown that if we increase the average yearly sales per store in a chain we increase the merchandising advantage of that chain over another chain of the same numerical size but with small sales per store. But it is not necessary. This Court will recognize the validity of the argument as to the other chain store advantages without a detailed explanation. Moreover, to sustain this tax it is not necessary to show that the chain with larger gross sales per store has a large number of merchandising advantages over the chain of the same number of stores with smaller total sales per store. If it has three or two or even one substantial advantage that is sufficient to justify the subclassification set up by Section 2 (b) of the Act. It is elementary that classification for the purpose of taxation need not depend upon wide differences.

The combined rates of the Minnesota composite chain store tax are not confiscatory.

The State District Court found that National Tea Company enjoyed profit in percentages of gross sales as follows (R. 48):

Year	Percentage
1923	2.94
1924	4.39
1925	2.34
1926	2.51
1927	2.48
1928	.54
1929	1.48

For the year 1930 to 1934 it suffered losses as follows (R. 48):

Year	Percentage
1930	2.86
1931	2.78
1932	.26
1933	1.83
1934	1.97

This Court will take judicial notice of the fact that the profit years, 1923 to 1929, were normal years and the loss years, 1930 to 1934, were depression years. The suffering of losses during depression years, when that was the experience of all forms of business, can have no significance. When we remember that chain grocery stocks are turned on an average about eleven times per year (R. 221, 656-657)

it is apparent that the total profits of National Tea Company during normal years were substantial.

Plaintiff's Exhibit O (Record 221, 648), shows that nineteen department store chains, with total sales in 1933 of $905,509,800, had an average ratio of net profits to sales of 2.89% with a turnover of 5.5, and 3.08% in 1934, with a turnover of 6.2 (R. 221, 650, 651); that drug chains, with total sales in 1933 of $88,038,600, had an average ratio of net profits to sales of 3.38%, with a turnover of 6.0, and 4.93% in 1934, with a turnover of 6.1 (R. 221, 653-654); that eighteen grocery chains, with total sales in 1933 of $1,708,268,400, had an average ratio of net profits to sales in 1933 of 2.45%, with a turnover of 11.7, and 1.93% in 1934, with a turnover of 10.8 (R. 221, 656-657); that ten variety chains, with total sales in 1933 of $618,192,500, had an average ratio of net profits to sales of 6.91%, with a turnover of 6.9, and 6.85 in 1934, with a turnover of 7.3.

It is worthy of note that each of these four groups of chains, even in depression years, made very substantial rates of profit on each turnover and had turnovers of from 5.5 to 11.7.

It is apparent that the rates of the Minnesota composite tax, which at the highest are only slightly in excess of one per cent of total sales, is not confiscatory.

The existence of differences in profit margins between different chains does not render this tax invalid.

The fact that there may be wide variations in the profit margins between different kinds of business and different kinds of merchandise, and wide differences in the rate of net profit made by different concerns in the same line of

business for a given period and wide variations made by the same concern in any given line of business from year to year and from time to time, as found by the State District Court (R. 50, 83), does not argue against the validity of the tax nor render it arbitrary. Exactly the same variations in profits and rates of profit of chain store groups is present whether the measuring rod used in levying the tax is number of stores or the dual measure of the Minnesota tax. The Indiana, the Florida, the West Virginia and the Louisiana taxes cut across the line of profit quite as much as the Minnesota tax, and yet were upheld by this Court. Mr. Justice Cardozo made this point in his dissent in the Stewart case, supra, saying (p. 579):

> "Classification in those cases (the Indiana, Florida and West Virginia chain store tax cases) ran athwart the line of profit, yet it was none the less sustained."

There are other valid reasons why such variations in profits do not render such a tax as this arbitrary. Variations in profit margins between different kinds of business can afford no basis for complaint, for the difference between different kinds of business is itself a valid basis for classification. If the legislature, for example, wishes to let the tax fall more heavily on the millinery chains than on the food chains, that is a matter within its power and in nowise arbitrary. Variations in profit margins between different concerns in the same line of business can afford no basis for complaint. The same variations in profit margins exist in connection with the levying of every tax. This tax is not based on net income and the rules of the net income tax no more apply to this tax than to any other tax that is not a net income tax.

Variations in the net income of the same concern from year to year do not render this tax arbitrary. If a state had to vary its taxes with the net income of its people, government could collect little revenue in depression years, when its need for revenue is the greatest.

The sale of a given quantity of goods by a chain with large total sales differs substantially from the sale of the same quantity of goods by a small chain. This difference may properly be made the basis of classification for the purpose of taxation.

When the Supreme Court of Minnesota quotes with apparent approval the finding of the State District Court to the effect that the Act taxes different persons at different rates for the privilege of doing the same act, it fails to take note of the fact of common knowledge, supported by the District Court's findings, that large chains enjoy great advantages over small chains in merchandising and do not carry on their business in the same manner as small chains. These advantages have been stated and explained. We need not repeat them here.

In the Grosjean case, supra, p. 422, this Court calls special attention to the advantages resulting from large volume of purchasing power and points out that this is a matter of common knowledge. We quote:

> "The record discloses *what would be plain enough without evidence*, that generally volume of purchasing power spells lower prices, special terms, and other advantages." (Italics ours.)

In support of this statement the Court refers to the fact that the Great Atlantic and Pacific Tea Co. collected $8,-

105,000 in secret rebates from its vendors in one year. It is too apparent for extended argument that the sale of a given quantity of goods by such a company is not the same act as the sale of the same quantity of goods by a small chain.

It is likewise apparent that these differences in merchandising between chains with large sales and chains with small sales, with great advantages in favor of the larger chains, make a reasonable basis for classification for the purpose of taxation.

POINT 4.

A state may use its taxing power to restrain the growth of monopolies.

Even since our nation came into being it has been recognized that a state in the exercise of its police power may pass laws to restrain the growth of monopolies. If so evident a proposition needs support it may be found in the decision of this Court in Crescent Oil Company v. Mississippi, 257 U. S. 129, upholding a Mississippi statute prohibiting companies manufacturing cotton seed oil from operating cotton gins. This Court said:

> "that the law assailed was enacted by the State in the exercise of its police power, to prevent a practice conceived to be promotive of monopoly with its attendant evils. It is clearly settled that any classification adopted by the State in the exercise of this power which has a reasonable basis, and is therefore not arbitrary, will be sustained against an attack based on the equal protection of the laws clause of the Fourteenth Amendment, and also that every state of facts sufficient to

sustain such classification which can be reasonably conceived of as having existed when the law was enacted will be assumed."

In this case a law directly prohibiting a combination of businesses deemed to tend toward monopoly was sustained because of its monopolistic tendency. But this Court has held in the Grosjean case, supra, p. 426, that:

"Whatever a state may forbid or regulate it may permit upon condition that a fee be paid in return for the privilege and such a fee may be exacted to discourage the prosecution of a business or to adjust competitive or economic inequalities."

Facts presented in other parts of this brief show that chain store groups are gradually taking over a larger and larger percentage of the retail merchandising of this country, and of the state of Minnesota. The State District Court's findings show that fifteen Minnesota chains have aggregate yearly sales in Minnesota of more than $1,000,000 and four have aggregate sales of more than $4,000,000 (R. 44). The total sales of these fifteen chains in Minnesota was $39,066,434 in 1934. Most of these chains being national chains it is evident that Minnesota sales represented only a small portion of the total sales.

It therefore appears that when the Act was passed the chain-store method of merchandising was tending toward a monopoly. It was proper for the legislature to take note of that fact and exercise its police power and its taxing power to counteract this tendency. It levied a tax particularly well adapted to curbing the undue expansion of all large chains, not only those that are large, powerful and destructive to independent stores because they have a great

number of stores, but those that attain great power and great capacity to injure weaker competitors by reason of enormous sales from a few stores. The largest chain in Minnesota in total sales is a two-store chain, Allied Stores Corporation, a respondent here.

It follows that the act is valid as a proper exercise of the state's police power to prevent the spread of monopoly.

POINT 5.

This Court's decision in the case of Valentine v. Great Atlantic and Pacific Tea Company, is erroneous and should be overruled.

During the past nine years five cases involving the validity of acts imposing progressive taxes on chain stores have been decided by this Court. These cases are the following:

State Board of Tax Commissioners v. Jackson, 283 U. S. 527.

Liggett Co. v. Lee, 288 U. S. 517.

Fox v. Standard Oil Co., 294 U. S. 87.

Valentine v. Great Atlantic and Pacific Tea Company, 299 U. S. 32.

Great Atlantic and Pacific Tea Co. v. Grosjean, 301 U. S. 412.

For brevity these cases will be referred to as the Jackson case, the Liggett case, the Fox case, the Valentine case, and the Grosjean case. In four of these cases the tax under attack was a progressive tax based on the number of stores

in the chain. The progressive character of these taxes was held valid on two grounds:

1. Increased chain store advantages resulting from adding stores to the chain justify subclassification and a progressively higher tax on larger chains.
2. Taxation may be made the means of the exercise of the state's police power and may be used to discourage the undue expansion of chains, and to encourage the development of other forms of industry. Grosjean case, pp. 426-427.

In the fifth case, the Valentine case, which involved a progressive tax on chains measured by two yardsticks, number of stores and gross sales, very similar to the Minnesota tax, the tax was held invalid on authority of Stewart Dry Goods Co. v. Lewis, 294 U. S. 550. We respectfully contend that this decision was unsound for the following reasons:

1. The decision in the Stewart case was not pertinent to the facts in the Valentine case.

In the Valentine case the court passed upon the validity of a progressive tax on chain stores measured by number of stores and gross sales. In the Stewart case the court considered a progressive tax on substantially all retail sales whether made by chain stores or independent retailers. It follows that important consideration of increased chain store advantage resulting from increased size were present in the Valentine case and could properly be made the basis for classification, but were not present in the Stewart case. Therefore the holding of this Court in the Stewart case should not have ruled the Valentine case.

In rendering its decision in the Stewart case this Court took pains to explain that the tax involved was not a chain store tax, the inference being that the decision would have been otherwise had a chain store tax of a similar character been involved.

The Court said (pp. 555-556):

> "The tax is not confined to a particular method of merchandising. All retailers, individual and corporate, selling every description of commodities, in whatever form their enterprises are conducted, make up the taxable class."

Later in the opinion the Court added (p. 565):

> "In several recent cases (referring to three chain store tax cases) we sustained the classification of chain stores at rates higher than those applicable to single stores, and graduated upward on each store as the total number of units in one ownership increased. We found this classification reasonable because of advantages incident to the conduct of multiple stores and obvious differences in chain methods of merchandising as contrasted with those practiced in the operation of one store. The instant cases present a classification of quite another kind. The Kentucky statute ignores the form of the organization and the method of conducting business. The taxable class is retail merchants, whether individuals, partnerships or corporations; those who through departments deal in many lines of merchandise."

2. There is no difference in principle between a progressive tax on chain stores based on size, size being measurde by the number of stores in the chain, and a progressive tax on chain stores based on size, size being measured by two yardsticks, number of stores and total sales.

We have set forth the reasons for this statement under Point 3. Here we merely wish to add that every reason that can be presented for sustaining a progressive chain store tax based on the number of stores argues as persuasively for sustaining a progressive chain store tax based on number of stores and total sales. The argument is even more convincing when applied to the dual tax, for while the specific tax allows certain chains with large sales but few stores substantially to escape taxation, the composite tax reaches all chains on an equitable basis.

It is apparent that the great purchasing power which commands increasingly great quantity discounts and special rebates is equally valuable whether it results from a great number of stores in one organization or from enormous sales from a few stores. It cannot be arbitrary for the tax-levying authority to take note of this fact and levy a tax which reaches both classes of chains.

3. The decision in the Valentine case unduly restricts legislatures in their choice of means in taxing chain stores.

In raising revenue and in restricting the undue expansion of chain stores the legislature is equally interested in reaching the chain that has great chain store advantages and correspondingly great power to injure competitors by reason of its great number of stores and the chain that has such advantages and such power by reason of enormous sales from a few stores. Montgomery Ward & Co., with total sales in Minnesota in 1934 of $6,777,204 from sixteen stores, paid a specific tax of $135, a nominal amount having no appreciably restrictive effect. Nor could any tax based on the number of stores have produced much revenue or had a substantially restrictive effect on such a chain,

with average annual sales per store of more than $400,000, without destroying the average chain, with much smaller annual sales. On the other hand, the gross sales tax of $29,138.12 on this company was substantial (R. 89, 592).

J. C. Penney Co., with 62 stores and gross sales in Minnesota in 1934 of $7,040,243, paid a specific tax of $4,105 and a gross sales tax of $60,140.62, a total tax of $64,235.62. (R. 89, 593). If Minnesota must limit its chain store tax to the specific tax on stores, its tax on Montgomery Ward & Co., with annual sales of nearly $7,000,000, becomes only $135, whereas its tax on the Penney Co., with sales not far from the same, will be $4,105, or thirty times as much. On the other hand, if the composite tax is upheld, the Ward and the Penney taxes will be respectively $29,273.12 and $64,245.62.

It seems clear that there is a closer correspondence between the amounts of the composite taxes on these two chains and their respective chain store advantages than between the amount of the specific taxes on these chains and their respective chain store advantages. It seems equally clear that there is a closer correspondence between the amounts of the composite taxes on these chains and their respective power to injure competitors than between the amounts of their specific taxes and their power to injure competitors. Yet this Court (in the Valentine case) and the Minnesota courts (in these cases) declare the composite tax to be arbitrary and invalid and the specific tax to be unobjectionable. We cannot understand how a court can properly strike down as arbitrary a tax which in actual operation is seen to approach closer to the ideal of absolute fairness and uphold as valid a similar tax which falls farther short of reaching that ideal.

4. The Valentine case has tacitly been overruled by the Grosjean case.

This proposition will be discussed under Point 7.

POINT 6.

This Court is asked to reconsider and overrule its decision in the case of Stewart Dry Goods Co. v. Lewis if it shall deem the decision in that case controlling in these.

A progressive tax on retail stores, whether chain stores or independent, based on total sales, was held invalid in the case of Stewart Dry Goods Co. v. Lewis, 294 U. S. 550. In holding invalid the Iowa composite chain store tax, based partly on number of stores and partly on gross sales, on authority of the Stewart case, this Court in effect has held that a progressive tax on chain stores based on this dual measure is not distinguishable in principle from a progressive tax on retail stores generally based on total sales. We have shown under Point 5 that there are substantial reasons for distinguishing the two cases. However, if this Court is still of the opinion that the two kinds of taxes are not distinguishable in principle it becomes material in this argument to set forth the reasons why this Court's decision in the Stewart case should be overruled.

That decision was made by a divided court, Mr. Justice Brandeis, Mr. Justice Stone and Mr. Justice Cardozo dissenting.

The Kentucky law under attack in the Stewart case imposed a progressive sales tax on substantially all retailers. That act was held to be in violation of the equal protection clause of the Fourteenth Amendment primarily because, in the opinion of the Court, classification for taxation on the

basis of gross sales is not based on a reasonable relationship between the amount of the tax and the privilege taxed.

Mr. Justice Cardozo, speaking for the three dissenting justices, takes the position that there is good authority for believing that a reasonable relationship exists between the amount of business done and capacity to pay. At the beginning of his dissenting opinion he says:

> "In the view of the majority, the relation between the taxpayer's capacity to pay and the volume of his business is at most accidental and occasional. In the view of the legislature of Kentucky and its highest court (Moore v. State Board of Charities and Corrections, 239 Ky. 729; 40 S. W. (2d) 349), the relation, far from being accidental or occasional, has a normal or average validity, attested by experience and by the judgment of trained observers. The one view discovers in the attempted classification an act of arbitrary preference among groups essentially the same. The other perceives in the division a sincere and rational endeavor to adapt the burdens of taxation to the teachings of economics and the demands of social justice."

Mr. Justice Cardozo finds that "a theory readily intelligible, whether sound or unsound, underlies the adoption of the graduated levels," namely, "that there is a minimum of size for business units below which efficiency is less on the average than expansion would tend to make it; that there are intermediate levels within which efficiency is subject on an average to progressive development; and that there is an ultimate level beyond which efficiency, even if promoted, goes forward more slowly and at a diminishing ratio." (294 U. S. 567).

The social theory underlying the tax, in the view of the dissenting judges, is that the man with a small business,

because of inferior capacity to pay, should bear the lighter burden (294 U. S. 567).

Mr. Justice Cardozo points out that in prior chain store tax cases classification ran athwart the lines of profit, yet was sustained (294 U. S. 579).

The three dissenting justices find an impressive body of opinion in the field of economics holding that a flat rate tax bears more heavily upon the small business than the large one. Commenting upon this view they say:

> "For that reason the flat rate is thought to be less efficient than the graded one as an instrument of social justice. The large dealer, it is said, occupies, both absolutely and relatively, a position of economic superiority by reason of the volume of his business. In that view, to make his tax heavier, both absolutely and relatively, is not arbitrary discrimination, but an attempt to proportion the payment to capacity to pay and thus arrive in the end at a more genuine equality. * * * It is not the function of a court to make itself the arbiter between competing economic theories professed by honest man on grounds not wholly frivolous. Otis v. Parker, 187 U. S. 606, 609. Responsibility for economic wisdom has been laid upon the legislature. There is finality in its choice, even though wisdom may be lacking, unless choice can be found to be so void of rationality as to be the expression of a whim rather than an exercise of judgment." 294 U. S. 569-570.

In discussing further the question whether there is rationality in the belief that capacity to pay increases, by and large, with increased receipts, Mr. Justice Cardozo aptly points out that merchants constantly act upon that faith, that but for that faith "there would be an end to the hot pursuit after wider markets."

Answering the contention that as between one business and another or between one person and another person in the same line of business a progressive sales tax results in various rates of return, Mr. Justice Cardozo points out that this is as much true of the income tax. One person's net earnings of $100,000 may be the return on capital of $2,000,000 and another person's net earnings may be the return on twice as much capital. Yet they pay the same tax (294 U. S. 571).

We believe a progressive tax on retail sales, general in application, is sustainable for the following reasons:

1. Capacity to pay is recognized as a proper basis for taxation.
2. Generally speaking, the larger the total sales of a business, whether chain store or independent, the greater is the net income and the greater the capacity to pay.
3. Such a tax is as close an approximation to capacity to pay as most of the taxes that are sustained without question.
4. Practical considerations make it necessary to accept approximate correspondence between the amount of taxes and the various purposes that actuate the state in levying the tax. The apportionment of taxes is as complex as the complexity of present-day civilization. While capacity to pay is now generally recognized as one of the guiding principles in levying taxes, there are often, as in the levying of chain store taxes, police power considerations that are more important than mere revenue. There are even general welfare considerations that enter into the selection of capacity to pay as a guide. All of these are more or

less intangible things, incapable of exact mathematical statement. It follows that when the legislature classifies taxable subjects for the levying of a tax it must in the nature of things be satisfied with an approximate approach to an equitable apportionment, taking into account the various purposes for which the tax was levied.

5. In the exercise of the police power the legislature may properly levy a tax graduated in such a manner as to encourage the development of businesses of moderate size and restrict the development of businesses of great size.

This proposition has been discussed under Point 1.

POINT 7.

The decision of the Supreme Court of Minnesota in the present cases is not in harmony with the decisions of this Court.

The decision of the Supreme Court of Minnesota is contrary in principle to four of the five chain store tax decisions of this Court. The only chain store tax decision of this Court which may be deemed to support the Minnesota Court is the decision in the Valentine case, supra. That decision held invalid a progressive tax on chain stores measured by gross sales, a tax similar to the Minnesota tax. But the decision in the Grosjean case is subsequent to the decision in the Valentine case. It follows that if we are correct in our contention that there is no difference in principle between a progressive tax on chain stores measured by the number of stores in the chain and a progres-

sive tax on chain stores measured by gross sales, the Grosjean case tacitly overrules the Valentine case and upholds the validity of the Minnesota tax.

If the state can levy a progressive tax on chains based on size, using number of stores as the yardstick, it can levy a progressive tax on chains based on size, using gross sales as the yardstick, and it can levy a progressive tax on chains using both as the combined yardstick. This must be so unless there are unfair and arbitrary qualities in gross sales as a measure of chain store advantages and chain store power to cause injury to the general welfare not found in number of stores as a measure. The most casual examination of the evidence in these cases will show that the combined yardstick, number of stores and gross sales, used in the Minnesota tax, bears a much closer relation to chain store advantages and chain store power to cause social and economic injuries, than does the single yardstick, number of stores.

We give below the amount of gross sales, the number of stores, the amount of the specific taxes, and the amount of the combined taxes of the two plaintiffs for the year 1934 (Original Exhibit A, pp. 3 and 5):

	Gross Sales	No. of Stores	Specific Tax	Composite Tax
Allied Stores Corporation	$9,714,374	2	$ 5	$40,907.38
National Tea Company	$5,288,845	154	$18,520	$63,742.51

These figures speak for themselves. The specific taxes of the Allied Stores Corporation compares with the specific taxes of National Tea Company as 1 to 3704, the com-

posite tax, approximately, as 40 to 63. National Tea Company, with annual gross sales of a little over $5,000,000 cannot enjoy chain store advantages or chain store power to cause social and economic injuries 3,704 times as great as Allied Stores Corporation, with annual sales of nearly $10,000,000. But the proportion of 64 to 41 is presumably approximately accurate.

An examination of the tax levy on more than 300 chains which operate in Minnesota, as shown by Original Exhibit A, will show that in substantially every case the composite tax which the Minnesota courts condemn as arbitrary operates more equitably than the specific tax which they upheld.

This Court, in the Grosjean case, the last chain store tax case passed upon by this Court, held valid a progressive specific tax on chain stores based on the number of stores in the chain. That is the case which should govern the decision of the Supreme Court of Minnesota. There being no difference in principle between a progressive tax based on number of stores and a progressive tax based on both the number of stores and gross sales, unless the addition of the gross sales portion makes the composite tax more arbitrary than the specific tax, it follows that this Court, in upholding the progressive tax on the chain stores of Louisiana, based on the number of stores, in effect upheld the composite tax of Minnesota, unless there are arbitrary features in the composite tax not present in the specific tax. But an examination of the composite tax of Minnesota shows conclusively that the composite tax approaches much closer to the ideal of absolute fairness than does the specific tax standing alone.

The emphasis placed by this Court in the Grosjean case upon police power considerations further emphasizes the

fact that the decision in the present case is not in harmony with the decisions of this Court in the Grosjean case. In the latter case this Court says (p. 425):

> "Our decision need not, however, rest on conceptions of subject, measure and rate of tax. Much broader considerations touching the state's internal policy of police sustain the exaction * * *. Taxation may be made the implement of the exercise of the state's police power; * * *.
>
> "If in the interest of the people of the state, the legislature deemed it necessary * * * to neutralize the disadvantages of small chains in their competition with large ones, or to discourage merchandising by chains grown so large as to become a menace to the general welfare, it was at liberty to regulate the matter directly or to resort to the type of taxation evidenced by the Act of 1934 as a means of regulation."

It is evident that if the Louisiana legislature, in the exercise of the State's police power, may discourage the growth of chains grown so large in number of stores as to become a menace to the general welfare, the Minnesota legislature, in the exercise of the police power of Minnesota, may discourage the growth of chains grown so large in gross sales as to become a menace to the general welfare. Both classes of chains threaten to destroy the business of tens of thousands of independent merchants. They are equally subject to the state's police power and the state's taxing power. If the legislature desires to protect the independent merchants from this menace, and the weak chains from the strong, the court should not interfere.

POINT 8.

There is a reasonable relationship between the tax and the purposes of the Act.

It is a matter of common knowledge that the Minnesota chain store tax was levied for a dual purpose, to raise revenue and to curb the undue expansion of chain stores. The title of the act refers to it as "An act raising revenues, imposing a tax on conducting business by the system of chain stores." Implicit in the selection of chain stores for the imposition of a tax from which all independent stores are free is the police power purpose of restricting the undue expansion of chain stores. The progressive rates make that purpose clearer.

The one objection made by the Supreme Court of Minnesota to a progressive chain store tax measured by gross sales is the absence of a close relationship between the amount of the tax and the net profit resulting from gross sales. We contend that in levying a chain store tax for the dual purpose of raising revenue and curbing the undue expansion of chain stores there need not be a close relationship between the amount of the tax and the amount of net profit. In fact, if the correspondence between the amount of the gross sales tax and the amount of net profit is very close, the act can have but little effect in restraining the undue expansion of chain stores. It is only when the tax begins to cut severely into profit that the restraining influence becomes effective.

What we must have in order to satisfy the requirements of "equal protection" is a reasonable relationship between the progressive rate of the tax and the dual purpose of the

act. Clearly we have that relationship in the Minnesota Act. The gross sales tax on chains with small sales (less than $100,000 per year), and therefore small chain store advantages and little power to injure competitors, is very light, 1/20 of one per cent. This steps up gradually, as chain store advantages and power to injure competitors increase with increased gross sales, to one per cent for that portion of gross sales above $1,000,000. (Sec. 2 b of the Act).

We must remember that the gross sales portion of this tax is not based on net income, but is based, exactly as is the specific portion, on the fact that chain store advantages and chain store capacity for injuring competitors, increase with size. There is no exact correspondence between the amount of a progressive chain store tax measured by the number of stores and the amount of net income. Every year there are many chains that make no profit. During depression periods a considerable portion of the chains make no profit. Yet this Court has not held that to be a valid objection to the constitutionality of a progressive tax based on the number of stores in a chain. It follows that the gross sales portion of the Minnesota tax should not be held invalid although there is no exact correspondence between this portion of the tax and net income.

The propriety of taxing chain stores in such a way as to restrict profit has been recognized by this Court. In the case of Fox v. Standard Oil Co., supra, this Court says (p. 100):

> "A chain, as we have seen, is a distinctive business species, with its own capacities and functions. Broadly speaking its opportunities and powers become greater with the number of component links; and the greater

they become, the more far-reaching are the consequences, both social and economic. For that reason the state may tax the large chains more heavily than the small ones, and upon a graduated basis, * * *. Not only may it do this, but it may make the tax so heavy as to discourage the multiplication of units to an extent believed to be inordinate, and by the incidence of the burden develop other forms of industry."

We have heretofore quoted this Court's opinion in the Grosjean case to the same effect.

POINT 9.

The Minnesota chain store tax is a privilege tax.

The State District Court in effect declares the Minnesota Chain Store Tax to be a privilege tax when it says in its Conclusions of Law (R. 51, 84):

> "This act imposes a composite occupational tax upon persons engaged in conducting business within the state by a system of chain stores."

This Conclusion of Law stood unchallenged before the Supreme Court of Minnesota. Moreover, an examination of the Act shows that the tax was laid "on conducting business by the sy tem of chain stores." (See Title of Act and Section 1 (j). This is a clear announcement in the act itself that it is laid for the privilege of conducting business as a chain store organization.

Accordingly, when the Supreme Court of Minnesota, in its opinion, p. 448, says:

> "Nor is it a privilege tax, since the amount of tax bears no relation to the value of the privilege",

the court apparently means merely to say that it is not a valid privilege tax. If the statement were intended to be a characterization of the tax as not levied for the privilege of conducting business by the system of chain stores it would obviously not be in accordance with the facts as revealed by an examination of the Act. Nor was there any evidence whatsoever presented to show that the tax is not a privilege tax.

POINT 10.

This Court should render a final decision.

In a case where, as in these cases, a State Supreme Court has decided a matter on the basis of a provision of the Federal Constitution which is controlling, there may still, as in these cases, be a state matter involved. In such cases this Court has held that it has authority to decide all questions, state and federal, but in practice has generally sent the case back to the state court for action on the state matter. This obviously is the appropriate procedure in many cases.

In these cases, however, if this Court shall hold the Act valid under the first section of the Fourteenth Amendment, there will be nothing left for the Minnesota Supreme Court to decide. That court has already said explicitly in the case of Reed v. Bjornson, 191 Minn. 254, 261, 253 N. W. 102, 105, that the equal protection clause of the Fourteenth Amendment and the equality of taxes clause of the Minnesota constitution impose identical restrictions upon the state legislature with respect to classification in the field of taxation. The Supreme Court of Minnesota has reaffirmed that conclusion in these cases, National Tea Company v.

State, Allied Stores Corporation v. Same, 205 Minn. 443, 447. We quote:

> "Under U. S. Const. Amendment, XIV, S. 1, it is provided that, 'no State shall * * * deny to any person within its jurisdiction the equal protection of the laws.' Minn. Const. art. 9, S. 1, provides: 'Taxes shall be uniform upon the same class of subjects, * * *.' In Reed v. Bjornson, 191 Minn. 254, 253 N. W. 102, we held that these provisions of the federal and state constitutions impose identical restrictions upon the legislative power of the state in respect to classification for purposes of taxation."

Under this state of facts all questions at issue will be decided when this Court shall have decided the validity of the Act under the equal protection clause of the Fourteenth Amendment. If the act is valid under the equal protection clause of the Fourteenth Amendment it cannot conceivably be invalid under a provision of the state constitution identical in restrictive effect. It would therefore be a mere formality to send the case back to the state court for action.

Moreover, this Court has itself passed upon the question of the identity of the restrictive effect of the Fourteenth Amendment and the equality of taxes clause of the Minnesota constitution. In Lake Superior C. I. Mines v. Lord, 271 U. S. 577, 581, this Court says:

> "The only provision of the Minnesota Constitution which undertakes to limit the power of taxation, is in article 9, S. 1: 'Taxes shall be uniform on the same class of subjects, and shall be levied and collected for public purposes.' The state courts have said nothing to the contrary, and it seems to us sufficiently plain that this provision goes no further than the 14th

Amendment. Consequently, if the legislation under review does not offend that Amendment there is no conflict with the state Constitution."

This Court should therefore render a final decision.

CONCLUSION.

The problem of curbing the menace to the general welfare caused by the undue expansion of chain stores is a problem common to every state. Other states have approached this problem by levying progressive taxes on chain store groups based on the number of stores in the chain. These taxes effectively reached the chains which were large and powerful by reason of having a large number of stores, but did not and could not reach the chains which were large and powerful by reason of having enormous sales from a few stores.

The largest chain in Minnesota in point of total sales is a two-store chain. A tax based on the number of stores did not and could not reach such a chain. The Minnesota legislature took note of the fact that the true size of a chain is two-dimensional, depending in part on the number of stores and in part on the total sales of the chain. It passed an act based on these facts. That act in practice has worked far more equitably than any tax based on number of stores only can possibly work. This tax reaches such a chain as Allied Stores Corporation and similar chains with enormous sales but few stores with a tax commensurate with the chain store advantage of such chains and commensurate with the power of such chains to injure the general welfare. In doing so the state has not acted in an

arbitrary manner. The resulting tax operates in a manner more nearly approaching the ideal of absolute fairness than does the specific tax based on number of stores only.

The principle of progressive taxation of chain stores on a basis related to their chain store advantages and their chain store power to cause injuries to the general welfare has been accepted by this Court in a long line of decisions. The last chain store decision of this Court, the Grosjean case, supra, upholds this principle. It emphasizes the police power aspects of this tax and says that in such a case its "decision need not rest on conceptions of subject, measure and rate of tax" but on "much broader considerations touching the state's internal policy of police."

Approaching the consideration of the Minnesota Act on the same broad considerations touching the State's internal policy of police this court will find that the composite tax levied by the Act is closely related to the purposes of the Act, is not arbitrary, and is valid.

We respectfully submit that the gross sales portion of the Minnesota Chain Store Tax levied by Chapter 213 of the Session Laws of Minnesota of 1933, as amended, is valid under Section 1 of the Fourteenth Amendment to the Constitution of the United States and under Section 1 of Article 9 of the Constitution of the State of Minnesota and

that therefore the judgments of the Supreme Court of Minnesota and of the District Court of Ramsey County, Minnesota, should be reversed.

Respectfully submitted,

J. A. A. BURNQUIST,
Attorney General
of the State of Minnesota,
MATTHIAS N. ORFIELD,
Special Attorney,
GEORGE W. MARKHAM,
Special Attorney,
Counsel for Petitioner,
102 State Capitol,
St. Paul, Minnesota.

APPENDIX.

EXHIBIT "A".

SESSION LAWS OF MINNESOTA FOR 1933

CHAPTER 213.

An act raising revenues, imposing a tax on conducting business by the system of chain stores for selling or otherwise disposing of goods, wares, articles or commodities at retail, with certain exceptions providing for the assessment and collection thereof, and for the distribution of the proceeds therefrom, providing penalties for failure to pay such tax, defining certain crimes in connection with the enforcement of such tax, and appropriating money for the administration of this Act.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Definitions.—(a) The term "person", when used in this Act, shall include individuals, partnerships, trusts, associations, joint stock companies, corporations, and firms however organized or whatever be the plan of operation.

(b) There is hereby imposed upon every person engaged within the State of Minnesota in conducting a business by the system of chain stores from any of which are sold or otherwise disposed of at retail any goods, wares or merchandise, excepting any person selling at retail one or more of the following—fuel, lumber, building material, gasoline and

oils, and grain, if the gross sales of any such person from such produce or products shall, during any year for which the tax is imposed, equal or exceed 95 per centum of the total gross sales from all sources of any such person, and excepting cooperative associations organized under the laws of this State in good faith and not for the purpose or with the intent of evading the tax hereby imposed, an annual tax for each calendar year during any part of which such taxpayers shall be so engaged, which tax shall be computed as hereinafter provided for.

Sec. 2. Rate of Tax.—The tax imposed by Section 1 shall be equal to the sum of the amount due under the provisions of subdivision (a) and the amount due under the provisions of subdivision (b) of this section 2, as follows:

(a) A specific amount to be determined as follows:

(1) $5.00 for each store in excess of one and not in excess of 10 if said business is conducted at not in excess of 10 stores or mercantile establishments within this state under a single or common ownership, supervision or management.

(2) $15.00 for each store in excess of 10 and not in excess of 20 if said business is conducted at in excess of 10 but not in excess of 20 stores or mercantile establishments within this state under a single or common ownership, supervision or management.

(3) $35.00 for each store in excess of 20 and not in excess of 30 if said business is conducted at in excess of 20 but not in excess of 30 stores or mercantile establishments within this state under a single or common ownership, supervision or management.

(4) $65.00 for each store in excess of 30 and not in excess of 40 if said business is conducted at in excess of 30 but not in excess of 40 stores or mercantile establishments within this state under a single or common ownership, supervision or management.

(5) $105.00 for each store in excess of 40 and not in excess of 50 if said business is conducted at in excess of 40 but not in excess of 50 stores, or mercantile establishments within this state under a single or common ownership, supervision or management.

(6) $155.00 for each store in excess of 50 if said business is conducted at in excess of 50 stores or mercantile establishments within the state under a single or common ownership, supervision or management.

(b) An amount based on the combined gross sales in excess of the exemption set forth in Section 4, of said business at all stores or mercantile establishments within this state under a single or common ownership, supervision or management, but which shall be computed by applying the following rates to the specified portions of such entire or combined gross sales in excess of said exemption.

(1) 1/20th of one per cent on that portion of the gross sales not in excess of $100,000.00.

(2) 2/20ths of one per cent on that portion of the gross sales in excess of $100,000.00 but not in excess of $200,000.00.

(3) 3/20ths of one per cent on that portion of the gross sales in excess of $200,000.00 and not in excess of $300,000.00.

(4) 4 20ths of one per cent on that portion of the gross sales in excess of $300,000.00 and not in excess of $400,000.00.

(5) 5 20ths of one per cent on that portion of the gross sales in excess of $400,000.00 and not in excess of $500,000.00.

(6) 6 20ths of one per cent on that portion of the gross sales in excess of $500,000.00 and not in excess of $600,000.00.

(7) 8 20ths of one per cent on that portion of the gross sales in excess of $600,000.00 and not in excess of $700,000.00.

(8) 10 20ths of one per cent on that portion of the gross sales in excess of $700,000.00 and not in excess of $800,000.00.

(9) 12 20ths of one per cent on that portion of the gross sales in excess of $800,000.00 and not in excess of $900,000.00.

(10) 15 20ths of one per cent on that portion of the gross sales in excess of $900,000.00 and not in excess of $1,000,000.00.

(11) One per cent on that portion of the gross sales in excess of $1,000,000.00.

Sec. 3. Definitions.—The terms "store" and "mercantile establishment" shall mean any fixed place at which said business is conducted even if said place is at the same time being used for other purposes. Conducting a business by the system of Chain Stores shall mean conducting such business from two or more stores under a single or common ownership, supervision or management. Two or more

stores or mercantile establishments shall, for the purposes of this Act, be treated as being under a single or common ownership, supervision or management if directly or indirectly owned or controlled by a single person or any group of persons having a common interest in such stores or mercantile establishments, or if any part of the gross revenues, net revenues, or profits from any such stores or mercantile establishments shall directly or indirectly be required to be immediately or ultimately made available for the beneficial uses, or shall directly or indirectly inure to the immediate or ultimate benefit, of any single person or any group of persons having a common interest therein.

Sec. 4. What are gross sales.—The term "gross sales" shall mean the money value of the consideration received or receivable by the vendor or transferror from the vendee or transferee from every retail sale or transfer made in connection with the business upon which the tax levied by Section 1 is imposed, excepting gross sales of goods, the sale of which at retail is excepted from the tax as provided in Section 1 (b), even when sold at stores, sales from which are subject to the tax hereby imposed. The amount thereof shall be determined in accordance with the method employed by the taxpayer in keeping his accounts. A taxpayer keeping his account on an accrual basis shall be permitted in each year to deduct a reasonable amount to care for bad debts attributable to the business for such year, subject to correction by including recoveries in gross sales for the year of recovery. A taxpayer keeping his accounts on the cash receipts and disbursements basis shall include the gross receipts from sales in the gross sales of the year

of their receipt regardless of the year in which the sale was made. A taxpayer may, with the consent of the State Tax Commission, keep his accounts on the installment basis if such method properly reflects the gross sales of his business for any year, and said Commission may prescribe rules to insure that such taxpayers shall properly allocate gross sales as between successive tax years. Gross sales shall not include the consideration received by a vendor from a purchaser if the sale is made from a store or mercantile establishments in this state to a purchaser residing without this state unless the purchaser is present within this state at the time of such sale and purchase. The tax imposed by Section 1, so far as measured by gross sales, shall be measured by the gross sales of the year for which the tax is imposed; provided, however, there shall be exempted from the total aggregate gross sales of any such business in each tax year the gross sales from that one of all the stores or mercantile establishments within this State under a single or common ownership, supervision or management, which the person on whom the tax is imposed shall select if the State Tax Commission is notified thereof prior to the first day of February of the year for which the tax is imposed, provided, further that as to the tax for 1933, such notification may be made on or before July 1st, 1933.

Sec. 5. Computation of tax.—The tax imposed hereby so far as measured by Section 2-(a) shall be computed on the basis of the number of stores under a single or common ownership, supervision or management on July 1st of each tax year.

Sec. 6. Tax period to begin July 1, 1933.—The first year for which this tax is hereby imposed shall be the period commencing with July 1st, 1933, and ending with December 31st, 1933. The tax imposed, so far as measured in accordance with Section 2-(a) shall for that period be due and payable on or before July 1st, 1933, and that portion of such tax so far as measured by Section 2-(b) shall be due and payable on or before January 20th, 1934.

Sec. 7. Date payable.—The tax imposed by Section 1 shall be payable as follows:

(a) That portion thereof measured by Section 2-(a) shall be paid on or before January 20th of each year.

(b) That portion thereof measured in accordance with Section 2-(b) shall be paid on or before January 20th of the year succeeding that for which imposed or within 30 days after any person liable for such tax shall cease entirely to do business within this state of the kind on which the tax is imposed.

Sec. 8. Return to Tax Commission.—Every person on whom a tax is imposed by Section 1 shall make a return of his gross sales for the year for which the tax is imposed to the State Tax Commission on forms to be prepared by the Commission, and to be furnished him by said Commission. Said return shall be filed with the State Tax Commission on or before January 20th of the year following the year for which the tax is imposed or within 30 days after any such person shall cease entirely to do business within this state of the kind on which the tax is imposed. The Minnesota Tax Commission shall enter on its records, the amount

of taxes found and determined by it to be due from any person, as hereinbefore provided, and on or before January 30th following, shall certify such amount to the State Auditor, who thereupon shall make his draft upon such person for the amount of taxes thus certified and place the same in the hands of the State Treasurer for collection. When such drafts have been placed by the State Auditor in the hands of the State Treasurer for collection, the State Treasurer shall mail, within 10 days, to the person from whom the tax is due, a written notice of the amount thereof and demand for its payment. The taxes shall be collected by and paid to the State Treasurer.

Sec. 9. Tax Commission may make assessment.—If any person required by this Act to file any return shall fail to do so within the time prescribed by this Act, or shall make, wilfully or otherwise, an incorrect, false or fraudulent return, he shall on the written demand of the Tax Commission file such return, or corrected return, within 30 days after the mailing to him of such written demand. If any person shall fail within said time to file such return, or corrected return, the Tax Commission shall make for him a return, or corrected return, from its own knowledge and from such information as it can obtain through testimony or otherwise, and assess a tax on the basis thereof, the amount of which tax (less payment theretofore made on account of such tax) shall be certified to the State Auditor.

Sec. 10. Unpaid tax to be collected by sheriff.—If any such draft remains unpaid for more than 60 days after demand has been made by the Treasurer for its payment, recovery may be had thereon in an action in the name of

the State in the same manner as if it were a debt due the State. Such tax may also be collected by having the State Auditor issue his warrant to the sheriff of any county of the state commanding him to levy upon and sell the real and personal property of the taxpayer within the county, and to return such warrant to the State Auditor and pay to him the money collected by virtue thereof by a time to be therein specified, not less than 60 days from the date of the warrant. The sheriff shall proceed thereunder to levy upon and seize any property of the taxpayer within his county, and shall sell so much thereof as is required to satisfy such taxes and his costs, but such sales shall as to their manner be governed by the laws applicable to sales of like property on execution issued against property upon a judgment of a court of record. The sheriff shall make a return to the State Auditor and the proceeds of such sale less the sheriff's costs shall be turned over by the State Auditor to the State Treasurer who shall retain such part thereof as is required to satisfy the tax and costs and pay over any balance to the taxpayer. No suit shall lie to enjoin the collection of the taxes imposed by this Act.

Sec. 11. May recover back illegal tax.—A taxpayer who has paid, voluntarily or otherwise, or from whom there has been collected (other than by the method provided for in the first sentence of Section 10) an amount of tax for any year in excess of that legally due for such year, may recover the excess by an action of law against the state in any court of record, but such action shall be commenced within 2 years after the tax claimed to be excessive has been paid.

Sec. 12. Interest on unpaid taxes.—Taxes shall bear interest at the rate of one per cent per month during the period during which they remain unpaid. Said interest shall be collected in the same manner as hereinbefore provided for the collection of the taxes imposed by this Act.

Sec. 13. Violations a misdemeanor.—Any person liable to a tax imposed by this Act who shall fail to pay the same when payable, or who shall violate any other provision of this Act, imposing duties on him, shall be guilty of a misdemeanor.

Sec. 14. Tax Commission to administer act.—The Minnesota Tax Commission shall administer and enforce the assessment of the tax imposed by this Act. It may make and publish such rules and regulations, not inconsistent with this Act, as it may deem necessary in enforcing its provisions. It shall cause to be prepared blank forms for the returns required by this Act, and shall distribute the same throughout the State and furnish them on application, but failure to receive or secure them shall not relieve any person from the obligation of making any return required of him by this Act.

Sec. 15. Tax Commission may examine books.—For the purpose of determining the correctness of any return, or of determining whether or not any person should have made a return or paid tax hereunder, the Tax Commission shall have the power to examine or cause to be examined any books, papers, records, or memoranda relevant to making such determinations, whether such books, papers, rec-

ords of memoranda are the property of or in the possession of the taxpayer or any other person. It shall further have the power to require the attendance of any taxpayer or other person having knowledge or information relevant to such determinations aforementioned, to compel the production of books, papers, records or memoranda by persons so required to attend, to take testimony on matters material to such determinations, and to administer oaths or affirmations in any such connection. The Tax Commission is empowered at any time and from time to time to require any owner or manager of any store in the State of Minnesota to file with the Tax Commission, a statement under oath, showing the ownership, management and control of such store for the purpose of determining whether or not such store is subject to the tax hereby imposed. Such statement shall be in such form as the Tax Commission shall prescribe.

Sec. 16. Appropriation for expense.—There is hereby appropriated out of the moneys in the State Treasury, not otherwise appropriated, the sum of $10,000 for each of the fiscal years ending June 30, 1934, and June 30, 1935, respectively, which appropriation is hereby made to the State Tax Commission to be used by it for the purposes of collecting the tax provided for by this Act.

Sec. 17. Disposition of tax.—The revenue derived from taxes, interest, and fines provided for in this Act when collected is hereby appropriated for the purpose of being credited to the appropriation now annually made for aid to state high, graded, semi-graded, consolidated, industrial,

and rural schools, as now provided by law, to be distributed by the Department of Education in accordance with existing laws.

Sec. 18. Provisions separable.—If any part or provision of this Act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not impair or invalidate any other part or provision in the remainder of the Act; and, if any part or provision of this Act shall for any reason be adjudged by any court of competent jurisdiction constitutionally inapplicable to any case or situation within the terms of such part or provision, such judgment shall not impair or invalidate such part or provision as applied to any other case or situation within their terms; and, if any exception from the tax hereby imposed shall for any reason be adjudged by any court of competent jurisdiction invalid, the tax shall be imposed upon the taxable subject as to whom or which such exception has thus been held invalid.

EXHIBIT "B"

EXTRA SESSION LAWS OF MINNESOTA FOR 1933-1934

Chapter 16.

An act to amend Laws 1933, Chapter 213, Section 11, and Mason's Minnesota Statutes of 1927, Section 49.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Recovery of over paid tax in certain cases.—That Section 11, Chapter 213 of Laws 1933 be and the same hereby is amended to read as follows:

"Sec. 11. A taxpayer who has paid, voluntarily or otherwise, or from whom there has been collected (other than by the method provided for in the first sentence of Section 10) any tax not legally due or any amount of tax in excess of that legally due may (1) file with the Tax Commission a claim for the refund of such tax or such excess and/or (2) recover the same by an action at law against the State in any court of record, but no such claim may be filed and no such action may be brought after the expiration of two years from the date of payment of the tax involved. If a taxpayer shall file with the Tax Commission a claim for refund hereunder, no action may be brought against the State to recover the tax included in such claim until said Commission has finally disposed thereof or has failed within six months after the filing of such claim to render final action thereon.

"If the Tax Commission finds that the tax for the refundment of which claim is filed was not legally due or pay-

able, it shall issue its certificate to the taxpayer for the refundment thereof, otherwise it shall disallow such claim.

"Any claim for refund allowed by the Tax Commission, and any judgment recovered against the State in an action to recover any such tax, shall include interest upon the tax refunded or recovered from the date of payment until the date of refundment or judgment at the rate of six (6) per cent per annum, and any such judgment shall bear a like rate of interest from date of entry until date of payment thereof.

"Any certificate for refundment issued by the Tax Commission hereunder or a certified copy of any judgment against the State recovered hereunder may be filed with the State Auditor, who shall thereupon issue his warrant on the State Treasurer for the amount thereof in favor of the payee of such certificate or judgment creditor, as the case may be, and it shall be the duty of the State Treasurer to pay all such warrants out of any funds in the state treasury not otherwise appropriated.

"There is hereby appropriated out of any funds at any time in the state treasury not otherwise appropriated (but not exceeding at any time the total amount of taxes to that time paid or collected under this act plus interest at the rate of six (6) per cent per annum on the amount of each payment of taxes from the date paid until refunded by order of the Tax Commission, or repaid pursuant to judgment recovered hereunder or until claim for refundment thereof and action for the recovery thereof are barred hereunder) such sum or sums as may be necessary from time to time to pay such refunds and judgments."

Sec. 2. Mason's Minnesota Statutes of 1927, Section 49 insofar as inconsistent herewith is hereby amended.

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Supreme Court of the United States

October Term 1939

No. 500

STATE OF MINNESOTA,

Petitioner,

vs.

NATIONAL TEA COMPANY AND ALLIED STORES CORPORATION (Formerly Hahn Department Stores, Incorporated).

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

MICHAEL J. DOHERTY,
WILFRID E. RUMBLE,
WILLIAM MITCHELL,
Attorneys for Respondents,
E-1006 First National Bank Building,
Saint Paul, Minnesota.

Review Publishing Co., 141 E. Fifth St., St. Paul, Minn.

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STATE OF MINNESOTA,

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---

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

STATEMENT.

This matter arises on the petition of the State of Minnesota for a writ of certiorari to the Supreme Court of the State of Minnesota to review a decision of that court holding certain sections of Chapter 213 of the Session Laws of the State of Minnesota of 1933, as amended by Chapter 16 of the Extra Session Laws of 1933-34, to be invalid because in conflict with Section 1 of Article 9 of the Con-

stitution of the State of Minnesota and also Section 1 of the Fourteenth Amendment to the Constitution of the United States. The decision below is reported at 286 N. W. 360, and appears in the record at pages 904 to 912.

SUMMARY OF ARGUMENT.

The petition for certiorari in this case fails to enumerate in its statement of "reasons relied on for allowance of the writ" (pages 10-19 of the brief) any of the usual reasons sufficient for exercise of this court's discretionary power to grant the writ (see Rule 38, Paragraphs 2 and 5).

However, what the petitioner urges elsewhere in its brief—and what is in fact the *only* reason which it can urge at all for the granting of the writ—is presence of a substantial Federal question. This question is whether or not the State tax involved violates the "equal protection" clause of the Fourteenth Amendment of the Federal Constitution.

Respondents contest this ground. Their position is that (1) the decision below proceeded upon an independent State ground broad enough to maintain the judgment (namely, that it violated the "uniformity" clause of the State Constitution); and (2) the State court decided a question which, in so far as it is a Federal question, was decided below exactly in accordance with applicable decisions of this court.

ARGUMENT.

I. THE DECISION BELOW WAS BASED UPON AN INDEPENDENT GROUND OF STATE LAW.

The State concedes (p. 22) that if the judgment of the State Court was based, not alone upon a ground involving a federal question, but also upon another and independent ground, broad enough to maintain the judgment, no federal question is presented and this Court will not take jurisdiction. In fact it could not be argued otherwise. *Lynch v. New York*, 293 U. S. 52. The State then argues that in the case at bar the State matter decided was not independent.

It clearly appears that the decision of the Minnesota Supreme Court in the consolidated cases at bar was based upon an independent ground of state law which had been present in the cases from the outset and which was urged at every stage of the proceedings.

The complaint in each case contained the following allegations (R. p. 6, ff. 17-18, and p. 93, ff. 277-279):

"The said Act, as plaintiff alleges, is null and void on its face, and especially by reason of the facts hereinafter alleged, because

(1) It is in violation of Article 1, Section 2, of the Constitution of the State of Minnesota, in respect of the provision thereof that 'no member of this State shall be * * * deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers';

(2) It is in violation of Article 1, Section 7, of the Constitution of said State, in respect of the provision thereof that 'no person shall be deprived of life, liberty, or property without due process of law';

(3) It is in violation of Article 4, Section 34, of the Constitution of said State, in respect of the provision thereof that all general laws 'shall be uniform in their operation throughout the State';

(4) It is in violation of Article 9, Section 1, of the Constitution of said State, in respect of the provision thereof that 'taxes shall be uniform upon the same class of subjects';"

These allegations were denied by the State (R. p. 49, f. 146, and p. 123, f. 369).

The trial court, in its Findings of Fact in each case, found (R. p. 79, f. 236 and p. 146, f. 438) that "the imposition of the tax, so far as measured by Section 2(b) of the Act is in violation of Article 9, Section 1, of the Constitution of the State of Minnesota * * * and is therefore void". In its Conclusions of Law in each case the trial court found (R. pp. 84-85, ff. 252-253 and p. 151, f. 453) that "the gross sales tax feature of said act, that is, the provisions imposing tax as defined and measured by Section 2(b), is unconstitutional as being in violation of Article 9, Section 1, of the Constitution of the State of Minnesota * * * and is therefore void".

The state Supreme Court, in its opinion, stated at the outset that the question at issue was "not whether chain store owners may, for taxation purposes, be validly classified separately from single store owners, but whether the imposition of a graduated gross sales tax upon all those engaged in conducting chain stores is discriminatory as between such owners, thus violating the constitutional requirement of *uniformity*". (Italics supplied.) The provision in the Minnesota Constitution is that "taxes shall be uniform upon the same class of subjects"; the provision in the federal Constitution is, of course, phrased in terms

of equal protection. In other words, the Court stated the problem in terms of the state constitution, not the federal.

After briefly reviewing the facts, the Court then quoted the Finding of Fact set forth above, quoted the applicable provisions of the federal and state constitutions, and cited *Reed v. Bjornson*, 191 Minn. 254, 253 N. W. 402. In its petition for certiorari the State relies heavily on the citation of the *Reed* case to show that the state Court was not exercising an independent judgment in construing and applying the provisions of the Minnesota Constitution; but examination of the *Reed* case itself will show that such was not the Court's view.

In the *Reed* case the Minnesota Court began by saying:

> "We are concerned only with the sound interpretation of the constitution of this state and of the United States. If we err in our construction of the latter, our views may be corrected by the Supreme Court. Our interpretation of our own constitution is of course final."

The Court then reviewed the history of the provision in the Minnesota Constitution requiring uniformity and went on to say (p. 260):

> "It will help us in the solution of the question here presented if we determine whether there is a distinction between our own constitutional provision requiring uniformity and the requirement of equal protection of the laws contained in the federal constitution. Certain legislative classifications have been questioned under the fourteenth amendment, and the judicial results may be helpful to us here if the two provisions are in effect the same or similar when applied to taxation. The respondent, recognizing the importance of this point, strenuously contends that the uniformity clause

is the more restrictive. Just how much more he does not assume to say, except that he asserts that it is sufficiently so to prohibit the classifications in the act at bar. In Lake Superior C. I. Mines v. Lord, 271 U. S. 577, 581, 46 S. Ct. 627, 628, 70 L. ed. 1093, 1101, a tax case, the Supreme Court, construing our constitutional requirement of uniformity, said that 'it seems to us sufficiently plain that this provision goes no further than the fourteenth amendment. Consequently, if the legislation under review does not offend that amendment there is no conflict with the state constitution.' Of course the proper construction to be given our constitution is not a federal question but one upon which our own views are controlling. Nevertheless we regard the construction thus placed upon it by that high court as entitled to great weight.

* * * * *

"The inference seems apparent that equality of protection includes uniformity of application to the subject of taxation and that our uniformity clause is not more restrictive than the equal protection clause of the fourteenth amendment.'

* * * * *

"If classifications logically similar to those before us have been justified under the fourteenth amendment, those holdings throw light on whether or not the classifications under our income tax act violate our uniformity clause."

So far from indicating that the Minnesota Supreme Court abdicates its independent judgment in favor of this Court in these cases involving the equal protection and uniformity clauses of the two constitutions, the *Reed* case shows that the Minnesota Court exercises an independent judgment even where this Court had previously construed the uniformity provision of the Minnesota Constitution.

The reference to the *Reed* case in the decision below obviously means that the tests to be applied under the uniformity clause of the Minnesota Constitution and under the Fourteenth Amendment of the United States Constitution are substantially the same. But the Minnesota Court has never indicated that it considers the decisions of this Court controlling in construing the provisions of its own fundamental law. It has not, and it cannot, abdicate its own function of declaring that law. Article VI, Section 1, Constitution of Minnesota; Reed v. Bjornson, supra; Erie v. Tompkins, 304 U. S. 64, 78.

In its decision here, the Minnesota Court indicated clearly that one of the alternative and independent grounds of its holding was the provisions of the Minnesota Constitution. The Court stated the general rule as to the requirement of uniformity under the state constitution and then cited three cases, each of which had held a state statute invalid because of violation of the state constitution alone. In the first of these, *State v. Minnesota Farmers Mutual Ins. Co.*, 145 Minn. 231, 176 N. W. 756, it was held that a tax on gross premiums of insurance companies violated the uniformity clause of the Minnesota Constitution. In the second case, *State ex rel. Mudeking v. Parr*, 109 Minn. 147, 123 N. W. 408, a statute licensing and taxing bankers and peddlers was held to violate the uniformity clause of the Minnesota Constitution. In *In re Improvement of Third Street, St. Paul*, 185 Minn. 170, 240 N. W. 355, a system of assessment was held to violate the uniformity clause of the Minnesota Constitution.

In none of these decisions was the federal constitution cited or involved. All went off solely on grounds of state law. The decisions were relied upon as controlling by the

Court in the case at bar, and it was only after considering them, and with the phrase "so much for our own cases", that the Court passed on to consider the provisions of the federal constitution. Obviously the fact that the gross sales tax violated Article 9, Section 1 of the Minnesota Constitution was a separate and independent ground of decision here, in itself broad enough to maintain the judgment. This alone is ground enough for denial of certiorari.

The State relies upon *Morehead v. New York ex rel. Tipaldo*, 298 U. S. 587, but in that case this Court pointed out that the remittitur of the lower court certified that the federal constitutional question was presented and *necessarily* passed on. It seems clear that by the use of this word the Court meant to point out that the State Court did not place its ultimate decision upon both state and federal constitutions, but that that court, passing the state ground of decision "necessarily" based its decision upon the repugnancy of the state statute to the federal constitution. An examination of the opinion of the Court of Appeals of New York, and of the remittitur sufficiently shows that the State Court did not rest its final conclusion and decision upon the repugnancy of the state statute to both state and federal constitutions, but, ignoring state ground, rested its decision solely upon the invalidity of the statute under the Fourteenth Amendment to the federal constitution.

The New York Court said (200 N. Y. 799, at 800, 801):

> "We do not see wherein this act differs materially from the act of Congress ruled upon in Adkins v. Children's Hospital of District of Columbia, 261 U. S. 525, 43 S. Ct. 394, 67 L. Ed. 785, 24 A. L. R. 1238, wherein it was held that the Minimum Wage Act of September 19, 1918, c. 174 (40 U. S. Stat. 960), was

an unconstitutional interference with liberty of contract. The interpretation of the Federal Constitution by the United States Supreme Court is binding upon us; we are in duty bound to follow its decisions unless they are inapplicable. We find no material difference between the act of Congress and this act of the New York State Legislature.

* * * * * *

"The distinctions between this case and the Adkins Case are differences in details, methods, and time; the exercise of legislative power to fix wages in any employment is the same. We should follow the law as given, and not speculate as to the changes which have come or are supposed to have come to economic conditions in the last decade which may move the Supreme Court to a further consideration of its ruling.

* * * * * *

"The order below should be reversed, the writ sustained, and the prisoner discharged, as chapter 584 of the Laws of 1933, under which he is held, is unconstitutional according to Adkins v. Children's Hospital of District of Columbia, 261 U. S. 525, 43 S. Ct. 394, 67 L. Ed. 785, 24 A. L. R. 1238."

Unlike the decision of the Minnesota Court below, the New York Court cited no state decisions in support of its ruling, and made no general statement of the effect of the state constitutional provision. Obviously the *Morehead* case was decided by the state court upon federal grounds only, and for that reason the jurisdiction of this Court in that case may be sustained under the rule of *Grayson v. Harris*, 267 U. S. 352. (As to the effect of the remittitur, see *Lynch v. New York ex rel. Pierson*, 293 U. S. 52 and *Honeyman v. Hanan*, 300 U. S. 14). A different situation from the *Morehead* case is presented here.

If in this case the State court had considered merely the federal question, and even if this court should reconsider its earlier decisions on that question and should come to an opposite conclusion, the most that this court could do would be to remand the case for determination by the state court of the controlling point arising under its own law. *Indiana ex rel. Anderson v. Brand*, 303 U. S. 95. Since the lower court has already determined the point of state law against the validity of the statute, there would be nothing for this court to do in any event but to affirm the judgment. The state ground of decision was independent and controlling, review by this court would be merely moot, and no proper occasion for certiorari is presented.

II. THE IDENTICAL FEDERAL QUESTION HAS ALREADY BEEN SETTLED BY PREVIOUS DECISIONS OF THIS COURT.

Even were the decision below not based upon an independent ground of state law, the identical federal question involved here has already been settled by previous decisions of this Court.

The leading case on the question of the validity of a graduated gross sales tax is *Stewart Dry Goods Co. v. Lewis*, 294 U. S. 550, involving the constitutionality of a Kentucky statute. Under that act, the minimum and maximum rates were identical with those of the Minnesota Act. Generally the rates in the lower brackets were somewhat higher than the Minnesota rates and the rates in the higher brackets somewhat lower. The two acts are identical in all features bearing upon their constitutionality. The Kentucky Act was held void for violation of

the equal protection clause of the Federal Constitution. The classification of merchants on the basis of volume of gross sales for the imposition of a graduated gross sales tax was held to be arbitrary, unequal, and discriminatory. Considered to be decisive against the validity of the Act was the absence of any reasonable or constant relation between volume of gross sales and rate or ratio of net profit. It was not in that case, and is not in the present case, a question of whether aggregate profits increase with volume of sales. The question is whether there is an increase in *ratio* of profit with an increase in volume of sales in correspondence with the graduation upward of the rates. The facts considered by the Court to be of controlling importance in the Kentucky case include the following, as stated by the Court (pp. 555-559):

(1) "Sales made by merchants taxed under any of the brackets of the act are made in competition with like sales of the same character of merchandise by those who are taxed under other brackets."

(2) "As a general proposition, increased volume of sales results in increased profits and increased ability to pay the tax * * *," but "the ratio of increase * * * differs in different lines of activity. * * *"

(3) "The rate of profit from retail sales generally varies with the character of the goods sold."

(4) "The management of a store or stores is one of the fundamental factors in determining whether or not a profit is realized and the amount of the profit. As a general proposition those merchants doing the largest amount of trade are enabled to secure the highest type of management."

(5) "And the excise is laid in respect of the same activity of each of them—the making of a sale. Although no difference is suggested, so far as concerns the transaction which is the occasion of the tax, be-

tween the taxpayer's first sale of the year and his thousandth, different rates may apply to them. The statute operates to take as the tax a percentage of each dollar due or paid upon every sale, but increases the percentage if the sale which is the occasion of the tax succeeds the consummation of other sales of a specified aggregate amount."

(6) "Argument is not needed, and indeed practical admission was made at the bar, that the gross sales of a merchant do not bear a constant relation to his net profits; that net profits vary from year to year in the same enterprise; that diverse kinds of merchandise yield differing ratios of profit; and that gross and net profits vary with the character of the business as well as its volume."

(7) "The trial court made no finding that the relation between gross sales and net profits, or increase of net worth, was constant, or even that there was a rough uniformity of progression within wide limits of tolerance."

The conclusion from this analysis of the law and facts was (p. 557):

"Thus understood, the operation of the statute is unjustifiably unequal, whimsical and arbitrary, as much so as would be a tax on tangible personal property, say cattle, stepped up in rate on each additional animal owned by the taxpayer, or a tax on land similarly graduated according to the number of parcels owned."

Every vice in the law and every fact in the case which condemned the Kentucky Act is present in the case at bar, and likewise condemns the Minnesota Act. The complete analogy between the facts of the two cases may be seen by comparing the comments of the Court in the Kentucky case above quoted with the findings of the Court below in

the case at bar, which include the following (R. pp. 76-79, ff. 228-235, and pp. 145-147, ff. 434-437):

"14.

"The stores of the plaintiff are distributed generally throughout the state, and are operated in both large and small cities and towns. Generally speaking, the stores are operated in direct competition with stores in the same line of business operated by other chains, by the members of voluntary chains, and by owners of single stores. Commonly in plaintiff's store location are found competing stores involving all three types of operation. The competing chains are of various sizes as measured either by number of stores or aggregate gross sales. The result has been that these competitors have been subject to and have paid taxes under the act at various rates both as to the specific and gross sales tax features. Thus an analysis of the taxes paid by the plaintiff and twenty-two of its principal chain competitors for the year 1934 shows that the gross sales tax average or composite rates paid by the competitors varied from .05 per cent to .85 per cent as compared with the rate of .87 per cent paid by plaintiff. The maximum rates varied from 1/20 of one per cent to one per cent, the latter being the maximum rate paid by plaintiff. * * *

"15.

"As in the case of plaintiff and its competitors, it is true generally that sales made by persons taxed under any brackets of the Act are made in competition with like sales of the same character of merchandise made by persons who are taxed under other brackets of the act.

"The gross sales tax is laid as an excise upon individual sales. As each sale is made liability for tax

upon that sale arises. Different sales, however, take different rates, though they be of identical articles or merchandise and be made in identical manner. The rate upon any sale depends upon the number and size of sales already made in the current year. The Act therefore taxes different persons at different rates for the privilege of doing the same act, and taxes the same person at different rates for the exercise of the same privilege at different times, depending upon the number of times it has previously been exercised in a given year.

"16.

"In Minnesota, as elsewhere, there is no constant or uniform relation between volume of gross sales and amount or rate of net profit. There are wide variations in the profit margins as between different kinds of business and different kinds of merchandise; also wide differences in the rate of net profit made by different concerns in the same line of business for any given period; also wide variations in the rate of profit made by the same concern or concerns in any given line of business from year to year and from time to time. A great many factors enter into the result, among which may be mentioned efficiency of management, form of organizations, expenses of operation, competitive conditions, character of community, type of patrons, proportion of high and low profit margin goods sold, and trend of commodity prices."

From these findings there inevitably followed the Court's conclusion as follows (R. p. 79, ff. 235-6, p. 146, f. 438):

"17.

"In the light of the foregoing findings the gross sales tax is arbitrary, unreasonable, unequal, and dis-

criminatory, and the classification of chain store systems or concerns according to the volume of their gross sales (resulting from the graduation of the gross sales tax rates) is without relation to the purpose of the Act and without relation to the value of the privilege for which the tax is enacted, and the imposition of the tax, so far as measured by Section 2(b) of the Act is in violation of Article 9, Section 1, of the Constitution of the State of Minnesota, and in violation of Article XIV, section 1, of the Amendments to the Constitution of the United States, and is therefore void."

and the Court's conclusion of law (R. pp. 84-85, f. 252-253 and p. 151, f. 453):

"15.

"The gross sales tax feature of said act, that is, the provisions imposing tax as defined and measured by Section 2(b), is unconstitutional as being in violation of Article 9, Section 1, of the Constitution of the State of Minnesota, and in violation of Article XIV, Section 1, of the Amendments to the Constitution of the United States, and is therefore void."

These findings were summarized and quoted in part by the Minnesota State Supreme Court and were relied upon by it in reaching its decision.

The State in its brief (pp. 15, 16, 27, 28) suggests as a point of distinction that the Kentucky tax was not a chain store tax; in other words, that the Act applied to all stores whereas the Minnesota Act excludes one store and is therefore a Chain Store Act. The supposed distinction is irrelevant and invalid. The Kentucky Act was held unconstitutional not because it applied to single stores as well as

to chain stores or because it failed to classify chain stores separately from single stores. It was held void because it classified retail merchants for a graduated imposition by the use of gross sales as the gradient. The vice in the Act would be present whether the tax was on single stores, on chain stores, or on both. The discrimination for which the tax was condemned was not in any way dependent upon the inclusion of single stores, and would have been equally fatal to its validity regardless of the class or classes of stores to which it applied. It will not, we think, be said that there is any closer relationship between gross sales and rate of net profit in the case of chain stores than in the case of single stores. If not, how could the elimination of single stores improve the Act from a constitutional standpoint? With respect to those remaining within the scope of the Act, it would be open to the same charge of discrimination and inequality that it was before and would be equally indefensible. Chain store owners as between themselves are as much entitled to equal protection of the laws, whether the discriminatory law complained of does or does not also apply to the owners of single stores. Otherwise stated, the discrimination under the Kentucky Act was not one that applied in any sense as *between* single store retailers as a class and chain store retailers as a class. It applied equally to both. It applied just as clearly between the owner of two stores and the owner of three stores; or between the owner of three stores and the owner of three hundred stores, as it did between the owner of one store and the owner of any other number of stores. The discrimination was between retailers having different volumes of gross sales subjecting them to different rates in a graduated scale. Equal protection of the laws and uni-

formity of taxes upon the same class of subjects require not only that the primary classification shall be justified by differences germane to the purpose of the law, but also that all those within a given primary class shall be accorded like treatment.

The Iowa Act involved in *Great Atlantic & Pacific Tea Co. v. Valentine*, 12 F. Supp. 760, 299 U. S. 32, was substantially a duplicate of the Minnesota Act. It was strictly a Chain Store Act, applying only to retailers operating two or more stores. Section 4(a) imposed a specific tax graduated precisely as in the Minnesota Act. Section 4(b) imposed a gross sales tax in flat sums but graduated according to volume of gross sales, called gross receipts. The lowest rate was $25.00 when the gross receipts were not in excess of fifty thousand ($50,000) dollars. The amounts were then stepped up with each additional $10,000 of gross receipts until at the top there was $1,000 for each additional $10,000 in excess of nine million ($9,000,000) dollars.

A three-judge Federal District Court held the specific tax valid but struck down the gross sales tax on the authority of the decision of the United States Supreme Court in the Kentucky case. The gist of the opinion on the gross sales features of the tax appears from the following language of the Court (p. 765):

> "While the Iowa chain store tax-law here under consideration is in some particulars different from the Kentucky statute under consideration by the Supreme Court in the Stewart Case, supra, we are of the opinion that as we find and have found that there are similar controlling facts in the two cases, that this case is governed by the pronouncements in the Stewart Case.
>
> "The classifications are different, as in the case at bar the tax under consideration is only imposed upon

retail stores having more than one separate unit, while under the Kentucky statute the classification included all retail stores. Under the Kentucky act the maximum exaction upon gross sales of the retailer was limited to 1 per cent, while here the maximum exaction which, under the act is applicable to some of the litigants in these cases amounts to approximately 5 per cent on the gross receipts from sales. Another difference is that the Kentucky statute provided for a percentage tax on each graduated classification of gross sales, while under the Iowa law the tax is a flat amount on each such graduated classification.

"In these particulars the cases are different, but we are unable to say that such differences permit the escape of a similar condemnation as being arbitrarily and discriminatory under the pronouncements in the Stewart Case. * * * The limitation in the classification to the taxation of chain stores only could not change the nature of the tax, and this would be true, giving consideration to the distinctive business species of the chain stores and all economic and welfare questions which are brought about by their advantages in making sales. Such questions might well bear on the propriety of the classification, but not on what constitutes the form or nature of a tax."

This decision was affirmed by the Supreme Court of the United States in a per curiam opinion upon the authority of its decision in the Kentucky case. *Valentine et al. v. Great Atlantic & Pacific Tea Co.*, 299 U. S. 32.

There is no distinction between the case at bar and the *Stewart* and *Valentine* cases. The State impliedly recognizes this in asking this Court to reconsider these prior decisions.

In *Ed. Schuster & Co. v. Henry; Wadhams Oil Co. v. Same*, 218 Wis. 506, 261 N. W. 20, there was involved the

validity of a Wisconsin Act imposing what was strictly a chain store tax. It applied only to operators of two or more retail stores. The tax was upon gross sales (called gross income), and the rates were graduated from six-twentieths of one per cent upon gross sales of $100,000 or less to thirteen-twentieths of one per cent on all gross sales in excess of $5,000,000. In the higher brackets the tax was only about one-half as great as that imposed under the Minnesota Act.

In the trial Court demurrers to plaintiffs' complaints were sustained. The orders sustaining the demurrers were reversed on appeal to the Supreme Court of Wisconsin, which followed the decision of the United States Supreme Court in the Kentucky case and held the law to be in violation of the Federal Constitution. That the factual basis for the decision corresponds with that in the case at bar is plainly indicated by the several excerpts from the opinion next below quoted (p. 21):

> "However, it is unnecessary to state those facts here, because the decision in Stewart Dry Goods Co. v. Lewis, 55 S. Ct. 525, * * * fully sustains the fundamental proposition contended for by the plaintiffs, that section 76.75, Stats., in imposing a graduated tax on gross incomes, is so arbitrary, unreasonable, and discriminatory that it denies to plaintiffs the equal protection of the laws guaranteed by the Fourteenth Amendment, U. S. Const."

In reference to certain allegations of the complaint and the conclusion to be drawn therefrom, the Wisconsin Court observed (p. 24):

> "Those statistics all demonstrate that there is no constant or reasonable relation between gross income and net income or between the gross income and the

> size, in so far as the number of stores is concerned, of an integrated chain, or between its gross income and its ability to pay a tax imposed at rates increased progressively for the higher brackets of its gross income, and that consequently there is no reasonable relation between such graduations in the rate of taxation and the actual relative value to the parties taxed of the privilege which is enjoyed by each of them as an operator of a chain store, and which constitutes the subject that is taxed. * * *"

An application by the State of Wisconsin to this Court for a writ of certiorari was denied. *Henry v. Wadhams Oil Co.*, 296 U. S. 625. It is a reasonable inference that the Wisconsin case was deemed to be governed by the Kentucky case.

There have been similar holdings in *Great Atlantic & Pacific Tea Co. v. Harvey*, 107 Vt. 215, 177 Atl. 423 and *Lane Drug Stores v. Lee*, 11 F. Supp. 672 (D. C. N. D. Fla.).

The State urges the cases of *Great Atlantic & Pacific Tea Co. v. Grosjean*, 301 U. S. 412, and *Pacific American Fisheries v. Alaska*, 269 U. S. 269, in support of its request that this Court reconsider its holdings in the *Stewart* and *Valentine* cases.

Obviously the State cannot complain (see State's brief, p. 10) to this Court that the Minnesota Supreme Court failed to uphold the statute in question as an exercise of the police power. The failure of the State Court to pass upon the point, or its determination that the statute was not an exercise of the police power or the failure of the plaintiffs to sustain the burden of proof on this point (see State's brief, p. 14), would involve no federal question.

Neither the *Pacific American Fisheries* case nor the *Grosjean* case are in conflict with the *Valentine* and *Stewart* cases. The latter two decisions involved taxes upon gross sales, the former, specific taxes upon number of stores or number of fish packed, and this Court was careful to emphasize the distinction. The only question in the *Grosjean* case was whether the State could take into consideration the fact that the taxpayer owned stores outside the State, and that question was resolved in favor of the State. The Petitioner has cited no case showing any duty in the State Supreme Court to construe the Act as being an exercise of the police power of the State. In fact the trial Court refused so to construe the Act (R. pp. 69, 137, ff. 204, 410) and the Supreme Court affirmed the trial court's decision without amending the findings or conclusions of law. Under such circumstances, this Court will not question the interpretation of the Minnesota statute which has been placed upon it by the courts of the State. *Article VI, Section 1, Constitution of Minnesota; Reed v. Bjorvson*, 191 Minn. 254, 257, 253 N. W. 102, *supra; Erie v. Tompkins*, 304 U. S. 64, 78.

The *Grosjean* case arose on appeal from a three-judge federal court. The Louisiana courts had never passed on the statute in question and this Court was in duty bound to adopt any construction on which the statute could be upheld. *Thompson v. Consolidated Gas Co.*, 300 U. S. 55. That is not the case where the State Court has first had an opportunity to pass on the construction and validity of its own statute and has made an adverse determination. Had the Minnesota court felt that this statute was intended as an exercise of the police power, or that, so intended, it was a valid exercise of the police power under the uniformity clause of the state constitution, it could have

so declared. Obviously the Court thought that the statute was not an exercise of the police power and that it could not be supported under either state or federal constitutions.

CONCLUSION.

The Minnesota Court held that the sections of the Act in question were invalid under the uniformity clause of the state constitution. The point had been relied upon by the trial court. The Minnesota Supreme Court stated in general terms the effect of the state constitution and cited, in support of its ruling, Minnesota cases which had gone off solely on ground of state law. It is clear that there was an independent ground of state law, adequate to maintain the judgment. Accordingly this Court will not take jurisdiction.

Even were the federal question controlling, the decision of the Minnesota Court was in harmony with previous decisions of this Court. There is no occasion for this Court to reconsider its former rulings. It is respectfully submitted that the petition for certiorari should be denied.

MICHAEL J. DOHERTY,
WILFRID E. RUMBLE,
WILLIAM MITCHELL,
Attorneys for Respondents,
E 1006 First National Bank Building,
Saint Paul, Minnesota.

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CHARLES ELMORE CROPLEY
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IN THE

Supreme Court of the United States

October Term, 1939

No. 500

STATE OF MINNESOTA,

Petitioner,

vs.

NATIONAL TEA COMPANY and ALLIED STORES CORPORATION
(Formerly Hahn Department Stores, Incorporated),

Respondents.

BRIEF OF RESPONDENTS.

MICHAEL J. DOHERTY,
WILFRID E. RUMBLE,
WILLIAM MITCHELL,
Attorneys for Respondent,
E-1006 First National Bank Building,
Saint Paul, Minnesota.

Review Publishing Co., 141 E. Fifth St., St. Paul, Minn.

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IN THE

Supreme Court of the United States

October Term, 1939

No. 500

STATE OF MINNESOTA,

Petitioner,

vs.

NATIONAL TEA COMPANY and ALLIED STORES CORPORATION (Formerly Hahn Department Stores, Incorporated),

Respondents.

BRIEF OF RESPONDENTS.

The opinion delivered in the Court below is officially reported in 205 Minnesota 443, and is also reported in 286 North Western 360.

STATEMENT.

These actions involve the constitutionality of Chapter 213, Laws of Minnesota, 1933, as amended by Chapter 16 of the Extra Session Laws of 1933-1934, imposing a so-called Chain Store Tax. The Act imposed both an occupa-

tional tax with rates based upon number of stores (generally referred to as the specific tax) and a graduated gross sales tax.

The Act became effective as of July 1, 1933. It was repealed as of January 1, 1937, by Chapter 93, Extra Session Laws of 1937, which re-enacted a specific tax only and eliminated the gross sales tax. The repealing act was passed by the legislature after the trial of these cases below but before decisions were filed. In these actions the only period concerned is from July 1, 1933 to December 31, 1936. The act now and since January 1, 1937 in force is not in any way in question.

The plaintiffs, operating chain store systems as defined by the Act, paid specific taxes for the last half of 1933 and for 1934 and 1935, and paid gross sales taxes for the last half of 1933 and the year 1934. Thereafter they brought these actions at law to recover the taxes so paid (a procedure expressly authorized by the Act), claiming the specific and gross sales taxes to be both unconstitutional and void. By agreement the actions were tried to the court without a jury, which made findings of fact and conclusions of law pronouncing the gross sales tax void but sustaining the specific tax. The gross sales tax was held repugnant to the State constitutional provision requiring taxes to be "uniform upon the same class of subjects" and to the equal protection clause of the Fourteenth Amendment. A money judgment was ordered and entered for each of the plaintiffs in the amount of the gross sales taxes paid with interest. No appeal was taken by the companies from the decision as to the validity of the specific tax, and that is not now in issue. The State appealed from the money

judgments, raising for review the question of the validity of the gross sales tax. In the Supreme Court of Minnesota there was an affirmance, and this Court granted certiorari.

The plaintiffs alleged the Act to be in violation of several provisions of the State Constitution. The State in its brief (page 3) says: "As to all of these provisions but one the State District Court held in favor of the validity of the Act." This is inaccurate. The court held the specific tax to be valid under each of the provisions (52, 84-5),* and held the gross sales tax void for violation of the inequality of taxation provision (50, 54, 83, 86), but made no determination as to the qualification of the gross sales tax under the other provisions, deeming it unnecessary, no doubt, to push the inquiry further.

Where the word "Act" is used herein, it is to be taken as referring to the gross sales tax only, unless the contrary is indicated.

SUMMARY OF ARGUMENT.

This Court is without jurisdiction. The decision of the Supreme Court of Minnesota rests upon an independent state ground, adequate to sustain it, viz., that t · Act in question is repugnant to the State Constitution. Were the decision subject to review as presenting a federal question, it should be affirmed. The classification for taxation sought to be established by the Act is unreasonable, arbitrary, capricious; and without relation to the purpose of the Act, and is in violation of the equal protection clause of the Federal Constitution and falls within the condemnation of the decisions of this Court in *Stewart Dry Goods Co. v.*

*Figures in parentheses refer to pages of the record.

Lewis, 294 U. S. 550, *Great Atlantic & Pacific Tea Co. v. Valentine*, 299 U. S. 32, and other cases, and of decisions of other courts in similar cases.

ARGUMENT.

I.

JURISDICTION.

Lack of jurisdiction is clear. While the action has drawn into question the validity of a state statute on the ground of its being repugnant to the Constitution of the United States (Judicial Code, Sec. 237 (b), 37 Stat. 790, 28 U. S. C. A., Sec. 344 (b)), it has also brought into question the validity of the statute as being repugnant to the Constitution of the State of Minnesota. The State Supreme Court held the statute invalid for violation of the State Constitution, and also held it invalid for violation of the Federal Constitution. The former was an independent non-federal ground of decision and left no federal question in the case subject to review. That the State Supreme Court held the Act offensive to the State Constitution, and therefore void, is not open to question. Indeed, one of the State's assignments charges as error that the court did so hold (State's brief, p. 30, Assignment 1). Elsewhere the State says the Court was "in duty bound" to so hold (State's brief, p. 9). On this point the decision will be further analyzed after a brief review of the applicable decisions.

It has been long and uniformly held that the presence of a federal question gives this Court no jurisdiction to review the decision of a state court, if a decision of that question

was or is unnecessary to a disposition of the case because of the presence also of a determinative non-federal question. Otherwise stated, the rule is that this Court has no jurisdiction to review a state court judgment resting upon two grounds, one involving a federal question and the other involving an independent question of state law, the latter alone being sufficient to sustain the judgment. *Walter A. Wood Company v. Skinner,* 139 U. S. 393; *Eustis v. Boyles,* 150 U. S. 361; *Dibble v. Bellingham Bay Land Company,* 163 U. S. 63; *Bacon v. Texas,* 163 U. S. 207; *Allen v. Arguimbau,* 198 U. S. 149; *Leathe v. Thomas,* 207 U. S. 93; *Arkansas Southern Railroad Co. v. German National Bank,* 207 U. S. 270; *Metzger Motor Car Company v. Parrott,* 233 U. S. 36; *Browne v. Union Pacific Railroad Co.,* 267 U. S. 255; *Lynch v. New York ex rel. Pierson,* 293 U. S. 52; *Fox Film Corporation v. Muller,* 296 U. S. 207; *Honeyman v. Hanan,* 300 U. S. 14; *City of New York v. Central Savings Bank,* 306 U. S. 661; *McGoldrick, Comptroller v. Gulf Oil Corporation,* (Jan. 15, 1940) 84 L. Ed. 337.

Covered by this rule are cases where, as in the case at bar, state laws have been held void as being in violation of both State and Federal Constitutions. *Metzger Motor Car Company v. Parrott,* 233 U. S. 36; *Lynch v. New York,* 293 U. S. 52; *City of New York v. Central Savings Bank,* 306 U. S. 661.

A recent statement by this Court of the general rule is found in *Lynch v. New York ex rel. Pierson,* supra, as follows:

> "It is essential to the jurisdiction of this court, in reviewing a decision of a court of a state, that it must appear affirmatively from the record not only that a federal question was presented for decision to the high-

> est court of the state having jurisdiction, but that its decision of the federal question was necessary to the determination of the cause, and that it was actually decided or that the judgment as rendered could not have been given without deciding it. * * * Where the judgment of the state court rests on two grounds, one involving a federal question and the other not, or if it does not appear upon which of two grounds the judgment was based and the ground independent of a federal question is sufficient in itself to sustain it, this court will not take jurisdiction."

In *City of New York v. Central Savings Bank*, 306 U. S. 661, the Court of Appeals of New York had held a section of the New York so-called Multiple Dwelling Law to be invalid on the ground that it violated the due process clause of the Fourteenth Amendment of the Federal Constitution and the due process clause (Article I, Section 6) of the Constitution of the State of New York, the clauses of both Constitutions being expressed in identical language. (279 N. Y. 266, 18 N. E. (2d) 151, as amended, 280 N. Y. 9, 19 N. E. (2d) 659).

On the motion for reargument and to amend remittitur, the Court of Appeals declared that there was logically no room for distinction between the clauses of the two Constitutions, and said:

> "Our conclusion that the statute is repugnant to article 1, section 6, of the State Constitution followed necessarily from our determination that in accordance with a long line of decisions of the Supreme Court of the United States the statute is repugnant to the Federal Constitution."
>
> 280 N. Y. 9, 19 N. E. (2d) 659.

The Court in its decision as originally filed declared:

> "A question under the Federal Constitution was duly presented and necessarily passed upon by this court. The plaintiff contended that chapter 713 of the Laws of the State of New York of 1929, as amended, is repugnant to article 1, section 10, of the Constitution of the United States and to the Fourteenth Amendment of that Constitution, U. S. C. A. This court held that such law is repugnant to article 1, section 10, of the Constitution of the United States and to the Fourteenth Amendment of that Constitution."

Upon the motion referred to, the remittitur was amended by adding thereto the language just above quoted from the original opinion.

Despite this insistence by the Court of Appeals that a federal question was presented and necessarily passed upon, this Court denied certiorari "for the reason that the judgment sought to be reviewed rests upon a non-federal ground adequate to support it".

Assuredly, as will be more fully developed later, there is even less basis for jurisdiction of this Court in the case at bar than there was in the Central Savings Bank case.

The latest decision of this Court on this subject is in *McGoldrick, Comptroller v. Gulf Oil Corporation*, (Jan. 15, 1940) 84 L. Ed. 337. The Supreme Court of New York (9 N. Y. S. (2d) 544) held that an assessment of a city sales tax upon certain imported crude petroleum was invalid as a burden on foreign commerce and as being in conflict with certain regulations adopted by Congress in the exercise of its powers under the commerce clause of the Federal Constitution. The Court of Appeals of New York (22 N. E. (2d) 480) affirmed the Supreme Court, briefly

reviewing the proceeding in the latter court but without itself otherwise defining the ground of its decision. This Court granted certiorari (60 S. Ct. 260, 84 L. Ed. 219). After argument the writ was dismissed for want of jurisdiction, this Court saying in an opinion per curiam:

> "In the absence of an explicit statement by the Court of Appeals that it annulled the assessment of the tax solely because of violation of the federal Constitution we are unable to find that the decision of the highest court of the State did not rest upon an adequate non-federal ground. Jud. Code, Sec. 237 (b), 28 U. S. C. 344 (b). Lynch v. New York, 293 U. S. 52; Honeyman v. Hanan, 300 U. S. 14; New York City v. Central Savings Bank, 306 U. S. 661."

In the case at bar, as will be later more fully shown, not only is there no explicit statement by the Supreme Court of Minnesota that it held the tax void solely because of violation of the Federal Constitution, but on the contrary there is what amounts to an explicit statement that the court did not hold the law invalid solely upon such ground, there being an explicit statement that the law was held invalid for violation of the State Constitution.

This Court, in the *McGoldrick* case, granted rehearing after the remittitur of the Court of Appeals had been amended (Jan. 23, 1940) to read in part as follows:

> "* * * In so far as the appeal taken by Joseph B. McGoldrick as comptroller of the city of New York is concerned, the affirmance was on the ground that the city sales tax as applied here violated article I, section 8, clause 3, and article I, section 10, clause 2, and article VI, clause 2, of the United States Constitution, and on no other grounds."

Of this Court attitude towards Constitutional questions it has said:

> "It is not the habit of the court to decide questions of a constitutional nature unless absolutely necessary to a decision of the case."
>
> *Burton v. United States,* 196 U. S. 283, 295.

> "Where a case in this court can be decided without reference to questions arising under the Federal Constitution, that course is usually pursued and is not departed from without important reasons."
>
> *Siler v. Louisville & Nashville R. R. Co.,* 213 U. S. 175, 193.

To give this Court jurisdiction "it must appear by clear and necessary intendment that the (federal) question *must* have been* raised and *must have been* decided in order to induce the judgment". Mr. Chief Justice Hughes in *Honeymann* v. Hanan, 300 U. S. 14.

Where a case presents both a federal and a nonfederal question, every legitimate doubt is resolved against this Court's jurisdiction. Where it does not appear upon which of two grounds the judgment was based, if the independent ground *on which it might have been based* was a good and valid one, sufficient in itself to sustain the judgment, this Court will not assume jurisdiction. *Klinger v. Missouri,* 13 Wall. 257, 263; *Eustis v. Bolles,* 150 U. S. 361, 367; *Dibble v. Land Co.,* 163 U. S. 63, 69; *Allen v. Arguimbau,* 198 U. S. 139.

And see concurring opinion of Mr. Justice Brandeis in *Ashwander v. Tennessee Valley Authority,* 297 U. S. 288, 345.

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*All italics here supplied for purpose of emphasis.

From the record in the present case it appears beyond dispute: (a) that the case presented a non-federal ground of decision; (b) that this ground (violation of the State Constitution) was sufficient to dispose of the case, and (c) that the Supreme Court of Minnesota held the law to be in violation of the State Constitution, and therefore based its decision upon a non-federal ground. None of these propositions has been or can be disputed.

The State's sole argument is that the state ground of decision was not *independent* of the federal ground. In support of this argument petitioner cited five decisions of this Court (pp. 5-6, State's brief). In all of them, except the *Morehead* case (298 U. S. 587) (which is principally relied upon), the non federal ground was held to be in fact independent, and no rule was laid down by which independence or the lack of it is to be determined. The *Morehead* case was brought up on certiorari to the Supreme Court of New York to review a judgment of the Court of Appeals. A minimum wage law for women was in the Supreme Court of New York attacked on the ground of violation of both the State and Federal Constitutions. While the Court of Appeals stated that it was the contention of the relator that the law contravened the Fourteenth Amendment of the Federal Constitution, and Article I, Section 6, of the Constitution of the State, the opinion nowhere expressly declared the law to be unconstitutional under the State Constitution, but made it plainly appear that the decision was rested solely upon the decision of this Court in *Adkins* v. *Children's Hospital*, 261 U. S. 525, holding a similar law of the District of Columbia to be in violation of the Federal Constitution. The opinion does not cite a single decision of any court of New York. The discussion of the

validity of the law includes no mention of the State Constitution, and the final declaration of the Court is that the law "is unconstitutional according to Adkins v. Children's Hospital of the District of Columbia, 261 U. S. 525". It is true that a headnote to the decision as reported in 270 N. Y. 233 recites that the law is violative of both the State and Federal Constitutions, but this is written by the state reporter and is not a part of the decision, there being no statute or rule of Court requiring such head notes to be written by the Court*. The remittitur from the Court of Appeals to the State Supreme Court expressly certified that the federal constitutional question was presented and *necessarily* passed on. This was apparently accepted by this Court as establishing that the decision of the federal question was essential to support the judgment. For this there was precedent in the cases of *Cincinnati Packet Co. v. Bay*, 200 U. S. 179; *Consolidated Turnpike Co. v. Norfolk & Ocean View Ry. Co.*, 228 U. S. 596, and *Lynch v. New York*, 293 U. S. 52.

However, in *City of New York v. Central Savings Bank*, 306 U. S. 661, this Court apparently refused to accept a similar certificate as establishing the presence of a federal question. And see *Honeymann v. Hanan*, 300 U. S. 14.

The jurisdiction of this Court was not really disputed by the respondent in the *Morehead* case, (so far as appears from the briefs) and under all the circumstances the assumption by this Court of jurisdiction in that case cannot

*See Sec. 31, Executive Law of New York, prior to Amendment of 1938.

be regarded as establishing a qualification of the rule previously prevailing and since reaffirmed.*

In the case at bar the independence of the state ground of decision is demonstrated by the record. The question as to the validity of the law under the State Constitution was in the case from its beginning, and was urged at every stage of the proceeding.

The complaint in each of the consolidated cases contains the allegation:

> "The said Act, as plaintiff alleges, is null and void on its face, and especially by reason of the facts herein alleged, because
>
> * * * * *
>
> (4) It is in violation of Article 9, Section 1, of the Constitution of said State, in respect of the provision thereof that 'taxes shall be uniform upon the same class of subjects'." (4; 58-9)

This allegation was denied by the State. (32; 69)

The trial court in each case found that:

> "* * * the imposition of the tax, so far as measured by Section 2 (b) of the Act is in violation of *Article 9, Section 1, of the Constitution of the State of Minnesota*, and in violation of Article XIV, Section 1, of the Amendments to the Constitution of the United States, and is therefore void." (50; 83)

*See discussion of the decision in this case by Professor Felix Frankfurter and Adrian S. Fisher in 51 Harvard Law Review, 577 (635), in which it is said: "The majority stated that the state court held the act repugnant to the due process clauses of the State and Federal Constitutions. * * * This statement was passed over in silence by the dissenting justices, but if it was true, the court would have been without jurisdiction to review the action of the state court. * * *".

In its conclusion of law in each case the trial court declared that:

> "The gross sales tax feature of said Act, that is, the provisions imposing tax as defined and measured by Section 2 (b), is unconstitutional as being in violation of *Article 9, Section 1, of the Constitution of the State of Minnesota*, and in violation of Article XIV, Section 1, of the Amendments to the Constitution of the United States, and is therefore void." 54; 86)

The third headnote or syllabus to the decision of the State Supreme Court reads:

> "A gross sales tax which classifies chain store owners for the imposition of a varying rate of taxation solely by reference to the volume of their transactions denies the equal protection provision of U. S. Const. Amend. XIV, *and is likewise violative of Minn. Const. art. 9, sec. 1.*" (205 Minn. 443)

This syllabus was written by the court* as required by statute (Mason's Minnesota Statutes, 1937, Sec. 134), and is therefore equally authoritative with the body of the opinion and perhaps more so. *State v. Hauser,* 101 Ohio 404, 131 N. E. 66; *Hart v. Andrews,* 103 Ohio 218, 132 N. E. 846, 847; *Forrester v. Forrester,* 155 Ga. 722, ~~117~~ 118 S. E. 373, 375, *Corbin v. Wilkinson,* 175 Okla. 247, 52 P. (2d) 45, 47; *Adelbert College v. Wabasha R. R. Co.* (C. C. A. 6) 171 F. 805, 812; *In re Paramount Publix Corporation,* (C. C. A. 2) 85 F. (2d) 83, 85.

After briefly reviewing the history of the case, the court defined the question before it thus:

> "The question is not whether chain store owners may, for taxation purposes, be validly classified sepa-

*And see report of decision in 286 N. W. 360, where syllabi by the court and syllabi by the publisher are set out separately.

> rately from single store owners, but whether the imposition of a graduated gross sales tax upon all those engaged in conducting chain stores is discriminatory as between such owners, thus violating *the constitutional requirement of uniformity.*"

In thus stating the issue in terms of "uniformity" rather than of "equal protection," the court gave strong indication that it was approaching the problem primarily from the standpoint of the State Constitution.

After saying of the trial court's findings that "These bespeak careful and conscientious study on its part," the Supreme court (page 445) continued:

> "The gross sales portion of the act in effect divides chain store merchants into 11 different classes based upon their volume of gross sales and imposes a different rate upon every such class. The different owners are taxed at different rates for performing the same acts, selling the same kind of merchandise, and at identical prices. The 'gross sales' during the taxable period is the only measure applied."

The court then quoted at length findings of the trial court said to be "especially important" bringing out the discriminatory character and operation of the Act, finally quoting the conclusion of the trial court considered to be of "*controlling* importance" that:

> "'the gross sales tax is arbitrary, unreasonable, unequal and discriminatory, and the classification * * * is without relation to the purpose of the Act and without relation to the value of the privilege for which the tax is enacted, and the imposition of the tax, so far as measured by Section 2 (b) of the Act *is in violation of Article 9, Section 1' of our constitution*, 'and in violation of Article XIV, Section 1, of the Amendments

to the Constitution of the United States, and is therefore void.'" (205 Minn. 446)

That the court meant to signify its approval and adoption of these findings and conclusion is manifest.

The court then quoted the pertinent provisions of the State and Federal Constitutions, and said:

> "*Our* cases hold (and that is the general rule) that the legislature has a wide discretion in classifying property for the purposes of taxation, but the classification must be based on differences which furnish a reasonable ground for making a distinction between the several classes. The difference must not be so wanting in substance that the classification results in permitting one to escape a burden imposed on another under substantially similar circumstances and conditions. The rule of uniformity, established by the Constitution, requires that all similarly situated shall be treated alike.' State v. Minnesota Farmers Mut. Ins. Co., 145 Minn. 231, 234, 176 N. W. 756, 757; State ex rel. Budeking v. Parr, 109 Minn. 147, 152, 123 N. W. 408, 134 A. S. R. 759; In re Improvement of Third Street, 185 Minn. 170, 240 N. W. 355.
>
> So much for our own cases."

Thus, without more, the court had condemned the Act as a violation of the Minnesota Constitution. The findings and conclusion of the trial court as to the character and operation of the Act, approved and adopted by the Supreme Court, placed it in direct conflict with the constitutional rule established by the cited Minnesota decisions, and left no escape from a decision of invalidity under the State Constitution. What the court later said about violation of the Federal Constitution was wholly unnecessary to a decision of the case.

The Supreme court further analyzed the nature of the Act (page 448) thus:

> "Obviously the tax is not one in the nature of earnings, income, or profits. The element of profit, income, or earnings is not considered in fixing the tax because sales wholly unprofitable or even if entailing a loss are taxed exactly upon the same basis as profitable sales. The only base is the volume of sales, not whether the result is a profit or loss. If it were to be considered a tax on sales the same lack of justifying relationship exists, since the rate applicable to each sale depends upon the number and size of preceding sales in the taxable year. Nor is it a privilege tax, since the amount of tax bears no relation to the value of the privilege. The different owners are taxed at different rates for performing the same act, the tax being dependent upon the frequency and amount of the various sales during the tax period. Nor do we think it can be justified as a tax upon property sold as there would be wide discrimination with respect to property of the same kind and character under different ownerships. * * *"

This further demonstrated the impossibility of the Act's satisfying the Minnesota rule of uniformity.

The cases cited by the court as illustrative of its own decisions on classification were all cases holding taxing acts void for violation of the uniformity provision of the State Constitution. In none of them was the Federal Constitution considered or a single decision of this Court cited.

The first case mentioned is *State v. Minnesota Farmers. Mutual Insurance Co.*, 145 Minn. 231, 176 N. W. 756. A tax upon the gross premiums of insurance companies was held to be in violation of the requirement of the State

Constitution that "taxes shall be uniform upon the same class of subjects". The court stated the rule in the precise words used by the court in the present case, quoted on page 15 hereof, citing as authority five of its own previous decisions.

The second case is *State ex rel. Mudeking v. Parr*, 109 Minn. 147, 123 N. W. 408, in which was called in question "an act to tax the occupation of and to license hawkers, peddlers and transient merchants". Certain provisions were held to be repugnant to the State Constitution, whether the act be regarded as a police regulation or as a taxing measure. Speaking of the act as a licensing law, the court said:

> "One of the fundamental rules controlling legislation of this character is that it must act uniformly upon all within the class."

citing five Minnesota decisions. Referring to the taxation aspect of the act and to the state constitutional requirement that taxes shall be uniform upon the same class of subjects, the court concluded:

> "Thus far we have considered the license feature only of the act. It is entitled 'An Act to tax the occupation of and to license hawkers, peddlers and transient merchants, and defining said occupations.' While removing some of the former restrictions on the methods of taxation, the amendment to article 9 of the constitution (chapter 168, p. 216, Laws 1905) specifically prescribes that taxes shall be uniform upon the same class of subjects. The legislature is not required to provide for the taxation of occupations; but if such a course is pursued, and any occupation is selected for that purpose, then the burden must fall equally upon the members of the class. Mutual Benefit Life Ins. Co.

v. County of Martin, 104 Minn. 179, 116 N. W. 572. The occupation or class designated by the act is that of peddling. Some peddlers are taxed while others are exempt, and for the reasons above stated the law cannot be sustained as a tax measure, any more than as a police regulation."

The third decision is *In re Improvement of Third Street, St. Paul,* 185 Minn. 170, 240 N. W. 355. The method by which a special assessment for local improvements was laid upon the real property benefited was held to violate the uniformity provision of the State Constitution. The requirements for validity of distribution of such assessments were discussed by the Court in part as follows:

"The applicable legal mandate is not in doubt. Given legislative authority, municipal corporations may 'levy and collect assessments for local improvements upon property benefited thereby without regard to a cash valuation,' but they must 'be uniform upon the same class of subjects'. Minn. Const. art. 9, sec. 1. * * * It is that requirement of uniformity that is violated so plainly and frequently by the Seamer rule. * * * The uniformity demanded is not the mathematical rectitude of equation or proportion. Noonan v. City of Stillwater, 33 Minn. 198, 203, 22 N. W. 444, 446, 53 Am. R. 23. There it was said to be enough to satisfy the demand for equality in taxes that a rule be 'one which will generally, and unless with accidental exceptions, apportion the burden justly, or with such approximate justice as is usually attainable in tax cases.'"

It was only after the State Supreme Court, in the present case, had contrasted the findings of the trial court with the state rule of uniformity that the court passed to a discussion of the equal protection clause of the Federal

Constitution. After an incidental mention of the *Stewart Dry Goods Co.* case (294 U. S. 550), the court took up the contention of the State that the right to classify chain stores separately for the purpose of taxation and to subclassify them according to number of stores operated had been upheld by this Court in the Indiana, Florida, West Virginia, and Louisiana cases, and it was actually in answer to that argument that the court cited the line of five decisions holding graduated gross sales taxes void for violation of the Federal Constitution. The court then closed its opinion with the paragraph relied upon by petitioner as showing that the violation of the State Constitution was not an independent ground of decision. It is:

> "We think the five cases to which we have referred have so definitely and finally disposed of the legal problem presented as to make it needless for us to analyze or discuss the great number of other tax cases where the same constitutional question was involved. These being the only cases to which our attention has been called directly deciding the question presented, we are of opinion that we should follow them and that it is our duty so to do."

Of the five cases cited, only two were decided by this Court. These two decisions did dispose of the case upon the federal constitutional question, but the court had already held that the case was disposed of under the State Constitution. The reasons which persuaded the court to hold the State Constitution violated are immaterial to the inquiry as to the jurisdiction of this Court. That the court viewed the provisions of the State and Federal Constitutions to be the same in their limitation upon the taxing power of the State does not detract from the independ-

ence of the state ground. Nor does the fact that the court may have thought persuasive (in addition to its own cited decisions) the decisions of this Court in similar cases arising under the Federal Constitution convert the state question into a federal question. We cannot attribute to the Supreme Court of Minnesota any misconception as to its freedom in the construction and application of the State Constitution. In saying of the five decisions referred to that "we are of opinion that we should follow them, and it is our duty to do so," the court quite obviously meant to indicate that it regarded these decisions decisive of the federal constitutional question, but manifestly the court did not believe or intend to say that it was bound by these decisions in its construction or application of the State Constitution or that the State Constitution was necessarily violated because this Court had held in similar cases that the Federal Constitution had been violated.

There could be no greater fallacy than the proposition urged in the State's brief (pp. 9-10) that since the restrictive effect of both Constitutions is the same, and since this Court held a graduated gross sales tax violative of the Federal Constitution, the State Supreme Court therefore *"was in duty bound"* to follow the decisions of this Court and hold the Act to be in violation of the State Constitution. For the State Supreme Court to adopt this view would involve a plain abdication of its constitutional and inherent powers and duties. Article VI, Sections 1 and 2, Constitution of Minnesota; *Lading v. City of Duluth*, 153 Minn. 464, 190 N. W. 981; *In re Disbarment of Greathouse*, 189 Minn. 51, 55, 248 N. W. 735; *Reed v. Bjornson*, 191 Minn. 254, 253 N. W. 102; *Erie v. Tompkins*, 304 U. S.

64, 78-9; *Highland Farms Dairy v. Agnew*, 300 U. S. 608, 613.

The State's whole claim on the point of "independence" rests essentially upon this obvious fallacy. If the Supreme Court was free to decide the state question, and did decide it, then there is no room for question that the decision was independent.*

The State Supreme Court entertained no such false concept of its function or powers as that suggested by the State. In the very case cited by the court for the conclusion that the state and federal constitutional provisions in question were of the same effect—the recent case of *Reed v. Bjornson*, 191 Minn. 254, involving a claim that a taxing act violated both the State and Federal Constitutions—the court sharply emphasized the finality of its own decisions respecting the State Constitution. It said (p. 257):

> "We are concerned only with the sound interpretation of the constitution of this state and of the United States. If we err in our construction of the latter, our views may be corrected by the Supreme Court. *Our interpretation of our own constitution is of course final.*"

After reviewing the history of the uniformity provision of the State Constitution, the court continued (p. 260):

> "It will *help* us in the solution of the question here presented if we determine whether there is a distinction between our own constitutional provision requiring uniformity and the requirement of equal protec-

*If the court was not free, but was, as the State urges, "in duty bound" to hold the State Constitution violated, how then is error charged to the court for having so held? (State's brief, p. 30, assignment 1).

tion of the laws contained in the federal constitution. Certain legislative classifications have been questioned under the fourteenth amendment, and the judicial results *may be helpful* to us here if the two provisions are in effect the same or similar when applied to taxation. * * * *Of course the proper construction to be given our Constitution is not a federal question but one upon which our own views are controlling.*"

So far from indicating any disposition on the part of the Minnesota Supreme Court to abdicate its independent judgment in favor of this Court in cases involving the equal protection and uniformity clauses of the two Constitutions, the *Reed* case shows that the Minnesota Court is fully aware of its own authority and exercised an independent judgment even where this Court had previously construed the uniformity provision of the Minnesota Constitution. There is no room for the supposition that the State Supreme Court, in the construction and application of its own fundamental law, considered the decisions of this Court controlling or otherwise than (as said in the *Reed* case) as a "help" to be availed of only in the light of the further principle expressed in the *Reed* case that "our interpretation of our own Constitution is of course final" and "is not a federal question". In a similar sense the court no doubt found "help" in the decisions which it cited from the Supreme Courts of Wisconsin and Vermont and the Federal District Court of Florida, for which, of course, no binding effect is claimed.

The provision of the State Constitution is a specific and direct limitation upon the legislative power of taxation. The equal protection clause of the Fourteenth Amendment operates indirectly and by construction as such limi-

tation. The former might conceivably apply to a case while the latter did not. The latter does not override state constitutional provisions whose object is to secure equality of taxation. *Bells Gap Railroad Co. v. Pennsylvania*, 134 U. S. 232. Between the provisions of the two Constitutions there is no question of dominance, subordination, or interrelation. The question of violation of one cannot be otherwise than independent of violation of the other. Therefore, even had the State Supreme Court rested its decision of violation of the State Constitution solely on the authority of decisions of this Court holding similar acts to be in conflict with the Federal Constitution, the violation of the State Constitution would nonetheless have been an independent ground of decision.

Suppose, as the utmost extreme case, that the two constitutional provisions were identical in letter as well as in effect and that the construction of the federal constitutional provision had been settled by decisions of this Court while the state constitutional provision had never been construed. Even in such case the State Supreme Court would not be "in duty bound" to follow the decisions of this Court. Rather it would be in duty bound to do otherwise if its judgment differed from that of this Court. In the final analysis, all there is to the State's point is the claim that the State Supreme Court, in holding the State Constitution violated, followed decisions of this Court on a similar question. Does then every court renounce its independence which, in construing a statute, adopts the views of a court of another jurisdiction construing a similar statute? Suppose the Supreme Court of Minnesota in this case had announced that it followed the decision of

the Supreme Court of Wisconsin in *Ed Schuster & Co. v. Henry*, and had left the decisions of this Court out of consideration, would it be said that it was the Supreme Court of Wisconsin, not that of Minnesota, that had actually passed upon the Minnesota Constitution? To say so would be hardly more absurd than to say a decision of the same court was not independent because induced by the persuasive force of decisions of this Court. In fact the claim that the Minnesota Supreme Court in holding the State Constitution violated merely applied the decisions of this Court is refuted by the opinion, which shows that the court reached its conclusion as to the State Constitution upon its own decisions before even considering the decisions of this Court. Its conclusion based upon its own previous decisions is amply sustained by them.

The trial court found the Act to be in conflict, first, with the State Constitution and, second, with the Federal Constitution. Had the State Supreme Court affirmed without opinion, this Court without doubt would have denied review upon the rule of *Lynch v. New York*, 293 U. S. 52, *McGoldrick v. Gulf Oil Corporation*, 84 L. Ed. 337, and earlier decisions cited therein. Many other like decisions could be cited, such as *Wood v. Skinner*, 139 U. S. 293, and *Bachtel v. Wilson*, 204 U. S. 36. This result would follow from the fact that it would not *affirmatively* appear from the decision of the Supreme Court that it rested *solely* upon a federal ground. For even a stronger reason should this Court refuse review where, as the record shows, the State Supreme Court not only did not make it appear that its decision rested solely on a federal ground, but did affirmatively and expressly make it ap-

pear that the decision did not rest solely, or even primarily, upon such ground, but on the contrary that it rested upon a nonfederal ground admittedly sufficient to sustain it. *City of New York v. Central Savings Bank,* 306 U. S. 661.

This Court has never attempted to lay down any general rule or formula by which "independence" of a state ground of decisions is to be determined. However, in the following cases some indication has been given as to the significance to be given to the use of the word "independent": *Pierce v. Somerset Railway,* 171 U. S. 641; *Moran v. Horsky,* 178 U. S. 205; *Giles v. Teasley,* 193 U. S. 146; *Leonard v. Railroad Company,* 198 U. S. 416; *Petrie v. Irrigation District,* 248 U. S. 154; *Mobile Railroad Company v. Mississippi,* 210 U. S. 187.

In *Giles v. Teasley,* this Court said:

> "It is equally well settled that if the decision of the State Court rests on an independent state ground—*one which does not necessarily include a determination of the Federal right claimed*—or upon a ground broad enough to sustain it without deciding the Federal question raised, this Court has no jurisdiction to review the judgment of the State Court."

In *Moran v. Horsky* it was held that laches as a bar to a federal right was a non-federal ground of state decision.

The *Petrie* case held that a decision that a federal right was prematurely asserted was upon an independent state ground.

In the *Pierce, Moran, Mobile Railroad,* and *Leonard* cases it was held that loss of federal rights by estoppel, laches, and waiver were independent state grounds of decision.

These cases show that a broad significance has been given to the word "independent" as it is used in the rule as to independent non-federal grounds of decision.

In the case at bar the state ground was clearly "independent" within the rule.

Starting from the premise that the limitations in both State and Federal Constitutions have been held alike in effect, the State draws from the opinion of the State Supreme Court the strained and unwarranted inference that therefore the court felt bound to follow the decisions of this Court construing the Federal Constitution, and was in fact so bound, and hence its decision as to the State Constitution was not independent. That the court was not so bound is too clear for serious argument. The supposition that it felt compelled by the decision of this Court is equally untenable. In *City of New York v. Central Savings Bank*, 306 U. S. 661, state and federal constitutional provisions were identical in language as well as in effect, and the Court of Appeals of New York, leaving nothing to inference, expressly declared that its holding the State Constitution violated "*followed necessarily*" from its determination "that in accordance with a long line of decisions of the Supreme Court of the United States the statute is repugnant to the Federal Constitution," and in addition declared that "a question under the Federal Constitution was duly presented and *necessarily* passed upon by this court." Yet this Court denied certiorari "for the reason that the judgment sought to be reviewed rests upon a non-federal ground adequate to support it." Manifestly, under this decision there should be a dismissal of the writ in the present case which has a far weaker claim upon the jurisdiction of this Court than did the *Central Savings Bank* case.

Neither does this case approach the requirements laid down in *McGoldrick v. Gulf Oil Corporation*, 84 L. Ed. adv. op. 337.

The foregoing analysis and authorities demonstrate that the decision of the State Supreme Court rests upon an independent non-federal ground adequate to support it, leaving no federal question for review by this Court. The writ should therefore be dismissed. In view of Subdivision 3, Rule 7, of this Court, it is understood that a formal motion for dismissal would be improper practice.

II.

FEDERAL QUESTION RIGHTLY DECIDED.

Assuming the federal question to be properly before this Court for review, there should be an affirmance. The identical question presented has been twice decided by this Court in exact accordance with the decision of the Supreme Court of Minnesota. *Stewart Dry Goods Co. v. Lewis*, 294 U. S. 550; *Great Atlantic & Pacific Tea Co. v. Valentine*, 299 U. S. 32.

A like decision was rendered by the Supreme Court of Wisconsin, and certiorari was denied by this Court. *Ed. Schuster & Co. v. Henry, Wadhams Oil Co. v. Same*, 218 Wis. 506, 261 N. W. 20; *Henry v. Wadhams Oil Co.*, 296 U. S. 625.

Petitioner attempts to distinguish the *Stewart* case, but admits impliedly at least, that the *Valentine* case is controlling of the case at bar. This Court is asked to overrule its decision in the *Valentine* case and also its decision in the *Stewart* case, if the rule of the latter case be deemed otherwise controlling.

The case at bar is squarely within the principle of both the *Stewart* and *Valentine* cases, and can only be reversed by overruling the decisions in both of those cases. In harmony with the *Stewart* and *Valentine* cases are the Wisconsin case already mentioned, a decision by the United States District Court for the Southern District of Iowa in the *Valentine* case, a decision by the United State District Court for the Northern District of Florida (*Lane Drug Stores, Inc. v. Lee*, 11 F. Supp. 672), and a decision by the Supreme Court of Vermont (*Great Atlantic & Pacific Tea Co. v. Harvey*, 107 Vt. 215, 177 A. 423). In each of these cases the court held void a graduated gross sales tax indistinguishable in principle from the Minnesota Act. See also *Safeway Stores, Incorporated v. Vigil*, 40 N. M. 190, 57 Pac. (2nd) 287.

The general principle underlying all of these decisions is one that has repeatedly been laid down by this Court. A comprehensive statement frequently quoted is found in *Louisville Gas Co. v. Coleman*, 277 U. S. 37, as follows:

> "In the first place it may be said generally that the equal protection clause means that the rights of all persons must rest upon the same rule under similar circumstances, * * * and that it applies to the exercise of all powers of the State which can affect the individual or his property, including the power of taxation. * * * It does not, however, forbid classification; and the power of the State to classify for the purpose of taxation is of wide range and flexibility, provided always that the classification 'must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike'. * * * That is to say, mere difference is not enough. The at-

tempted classification must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis.'"

Findings and Conclusion of Trial Court.

The gist of the facts bearing upon the constitutionality of the Minnesota Act—facts by which its conformity to the rule above stated is largely to be tested—is adequately summarized in brief by the trial court in the following findings (49-50; 82-83):

"14.

The stores of the plaintiff are distributed generally throughout the state, and are operated in both large and small cities and towns. Generally speaking, the stores are operated in direct competition with stores in the same line of business operated by other chains, by the members of voluntary chains, and by owners of single stores. Commonly in plaintiff's store locations are found competing stores involving all three types of operation. The competing chains are of various sizes as measured either by number of stores or aggregate gross sales. The result has been that these competitors have been subject to and have paid taxes under the act at various rates, both as to the specific and gross sales tax features. Thus an analysis of the taxes paid by the plaintiff and twenty-two of its principal chain competitors for the year 1934 shows that the gross sales tax average or composite rates paid by the competitors varies from .05 per cent to .85 per cent as compared with the rate of .87 per cent paid by plaintiff. The maximum rates varied from 1/20 of

one per cent to one per cent, the latter being the maximum rate paid by plaintiff. * * *

15.

As in the case of plaintiff and its competitors, it is true generally that sales made by persons taxed under any brackets of the Act are made in competition with like sales of the same character of merchandise made by persons who are taxed under other brackets of the act.

The gross sales tax is laid as an excise upon individual sales. As each sale is made liability for tax upon that sale arises. Different sales, however, take different rates, though they be of identical articles of merchandise and be made in identical manner. The rate upon any sale depends upon the number and size of sales already made in the current year. The Act therefore taxes different persons at different rates for the privilege of doing the same act, and taxes the same person at different rates for the exercise of the same privilege at different times, depending upon the number of times it has previously been exercised in a given year.

16.

In Minnesota, as elsewhere, there is no constant or uniform relation between volume of gross sales and amount or rate of net profit. There are wide variations in the profit margins as between different kinds of business and different kinds of merchandise; also wide differences in the rate of net profit made by different concerns in the same line of business for any given period; also wide variations in the rate of profit made by the same concern or concerns in any given line of business from year to year and from time to time. A

great many factors enter into the result, among which may be mentioned efficiency of management, form of organizations, expenses of operation, competitive conditions, character of community, type of patrons, proportion of high and low profit margin goods sold, and trend of commodity prices."

From these findings there inevitably followed the Court's conclusion as follows:

"17.

In the light of the foregoing findings the gross sales tax is arbitrary, unreasonable, unequal, and discriminatory, and the classification of chain store systems or concerns according to the volume of their gross sales (resulting from the graduation of the gross sales tax rates) is without relation to the purpose of the act and without relation to the value of the privilege for which the tax is enacted, and the imposition of the tax, so far as measured by Section 2 (b) of the Act is in violation of Article 9, Section 1, of the Constitution of the State of Minnesota, and in violation of Article XIV, Section 1, of the Amendments to the Constitution of the United States, and is therefore void." (50; 83).

and the Court's conclusion of law:

"15.

The gross sales tax feature of said act, that is, the provisions imposing tax as defined and measured by Section 2 (b), is unconstitutional as being in violation of Article 9, Section 1, of the Constitution of the State of Minnesota, and in violation of Article XIV, Section 1, of the Amendments to the Constitution of the United States, and is therefore void." (54; 86).

These findings (paragraphs 14, 15, and 16) were in part challenged in the Supreme Court of Minnesota, but were approved. They are again in part challenged in this Court. The findings are unassailable. They are not merely supported by the evidence, they are so indisputably established that no contrary findings could stand. The evidence upon which they rest will not be analyzed here, but will be briefly reviewed in an appendix hereto.

In an action tried to a court without a jury, its findings of fact, under Minnesota practice, are entitled to the same weight as the verdict of a jury and will not be reversed on appeal unless they are manifestly and palpably contrary to the evidence. *Wann v. Northwestern Trust Co.*, 120 Minn. 493, 139 N. W. 107; *Freeburg v. Honemann*, 126 Minn. 52, 147 N. W. 827; *Butler v. Badger*, 128 Minn. 99, 150 N. W. 233; *Wells-Dickey Trust Co. v. Lien*, 164 Minn. 307, 204 N. W. 950; *Lowrie v. Christensen*, 165 Minn. 181, 206 N. W. 390; *Sommers v. City of St. Paul*, 183 Minn. 545, 237 N. W. 427.

Findings so established are not reviewable by this Court. *Minneapolis & St. Louis R. R. Co. v. State of Minnesota*, 193 U. S. 53; *Waters-Pierce Oil Co. v. Texas*, 212 U. S. 86; *Thomas v. State of Texas*, 212 U. S. 278; *Mammoth Mining Co. v. Grand Central Mining Co.*, 213 U. S. 72; *Rankin v. Emigh*, 218 U. S. 27; *Kerfoot v. Farmers & Merchants Bank*, 218 U. S. 281; *Pure Oil Co. v. Minnesota*, 248 U. S. 158.

The findings in the present case are not within either of the two exceptions to the rule last stated, viz.: (1) where a federal right has been denied as the result of a finding shown by the record to be without evidence to support it, and (2) where a conclusion of law as to a federal right and

findings of fact are so intermingled as to make it necessary, in order to pass upon the federal question, to analyze the facts. *Aetna Life Insurance Co. v. Dunken*, 266 U. S. 389; *Creswell v. Grand Lodge*, 225 U. S. 246.

The State's brief devotes many pages (57-67) to the assembling of data from the bulletins of "Harvard University Bureau of Business Research" (dealing with experience of department and specialty stores only with a doubtful comment as to food stores) issued under the direction of Assistant Professor Carl N. Schmaltz. This data apparently is offered as evidence of some relationship between volume of gross sales and ratio of profit and as rebuttal of the contrary evidence in the case. The trial court, upon an abundance of evidence introduced before it, held the contrary. Does the State seek to charge the court with error because it based its findings upon the evidence in the case rather than upon Assistant Professor Schmaltz's bulletins, to which there is no reference in the record and of which the court probably never heard? It is difficult to comprehend what other purpose the State has in view. Assistant Professor Schmaltz was, of course, not a witness, and the soundness of his conclusions, such as they are, could not be tested by cross-examination. Many witnesses for the plaintiffs who testified to contrary conclusions were open to cross-examination upon the trial by counsel for the State, but their testimony was in no wise weakened. In addition there was further proof in the form of properly authenticated documentary evidence. In fact the distinct impression to be gained from the record is that plaintiffs' position on this issue was not seriously contested on the trial. Substantially the only rebuttal evidence offered by the State was the feeble testi-

mony of one witness—O. H. Landin—the weight of whose testimony is considered later herein. Believing that the findings of the court are to be tested by the evidence in the record, no attempt will be made to match the State's Harvard Bulletins with other published non-evidentiary literature or other Harvard Bulletins, despite the breadth of opportunity to do so.* Very pertinent in this connection is the observation of this Court in the Kentucky case (294 U. S. 550) that:

> "Argument is not needed, and indeed practical admission was made at the bar, that the gross sales of a merchant do not bear a constant relation to his net profits; that net profits vary from year to year in the same enterprise; that diverse kinds of merchandise yield differing ratios of profit; and that gross and net profits vary with the character of the business as well as its volume."

For documentary evidence of absence of relationship between sales volumes and profit ratios, particularly concerning department and variety stores, see Plaintiffs' Exhibit "Z", record pages 562-563, Plaintiffs' Exhibit "O.", record pages 649-651 and 658-660, and Plaintiffs' Exhibit "P.", record pages 665-670D. These exhibits are partially reviewed in an appendix hereto, pages 75 to 78.

Nature of the Act.

It is important to accurately analyze and have always in mind the precise nature of the gross sales tax and its

*For example, there might be mentioned Bulletin No. 99, page 22, where appears the conclusion that as to straight grocery chains the larger the chain the less satisfactory are the net earnings, and the same bulletin, page 24, where it is said of combination (grocery and meat) chains that there is no clear relation between size and rate of profit.

manner of operation. The following finding was made by the trial court and by the Supreme Court with approval was quoted in full and characterized as "especially important."

> "The gross sales tax is laid as an excise upon individual sales. As each sale is made liability for tax upon that sale arises. Different sales, however, take different rates, though they be of identical articles of merchandise and be made in identical manner. The rate upon any sale depends upon the number and size of sales already made in the current year. The Act therefore taxes different persons at different rates for the privilege of doing the same act, and taxes the same person at different rates for the excise of the same privilege at different times, depending upon the number of times it has previously been exercised in a given year."

This construction of the statute and determination of the nature of the tax is final and conclusive. In *Ward & Gow v. Krinsky*, 259 U. S. 503, 510, this Court, by Mr. Justice Pitney, said of a state court's construction of a workmen's compensation act claimed to violate the rights of employers under the Fourteenth Amendment:

> "In the exercise of our appellate jurisdiction we are bound by the construction of the state law adopted by its court of last resort; hence for present purposes it must be taken as settled that the legislature intended the compensation law as amended to apply to an employee in Krinsky's situation, precisely as if it were so declared in the words of the statute. Our function is confined to determining whether, as so construed and as applied, to the concrete facts of the case, the statute contravenes the limitations imposed by the Fourteenth Amendment upon state action."

Dawson v. Kentucky Distilleries Co., 255 U. S. 288, 292, dealt with a tax described in the act as "an annual license tax." It was held to be in fact a property tax. This Court, by Mr. Justice Brandeis, said:

> "Here we are concerned only with the taxes which are alleged to be upon 'the business of owning and storing such spirits in bonded warehouses.' The question is whether as to such this fifty cents a gallon tax is an occupation tax or is a property tax. The question is one of local law, so that a decision of it by the highest court of the State would be accepted by us as conclusive."

In *Fox v. Standard Oil Co.*, 294 U. S. 87, 96, this court by Mr. Justice Cardozo said:

> "The complainant was at liberty to maintain a suit in the state courts where the meaning of the statute could have been determined with finality."

In *Laurel Hill Cemetery v. San Francisco*, 216 U. S. 358, this Court, by Mr. Justice Holmes, referred to the "great reluctance" which the Court feels "to interfere with the deliberate decisions of the highest court of the state whose people are directly concerned."

The nature of the Minnesota tax has been settled by the courts below exactly in accordance with the decision of this Court in the Kentucky case as to the nature of the same character of tax there involved. While there was a dissenting opinion, it did not question the majority analysis as to the nature of the tax.

While the rates are graduated according to various gross volume levels, the tax itself is not upon such volumes as units but upon each single individual sale. As each sale

is made, however small, liability for tax thereon at the applicable rate immediately arises. The rate on the sale of any particular article of merchandise (within the minimum and maximum limits) is governed by the number and amount of all other sales of all merchandise within the same year. The tax upon the sale of a pair of shoes, for example, made at one period in the year might be twenty times the tax upon the sale of an identical pair of shoes sold at the same price at another period of the year or sold by another merchant in the same period. Assume the sales of a merchant having a $1,200,000.00 annual business to be evenly distributed by months over the calendar year, and that in each month he sold a set of furniture at $100.00, all of the same kind and value. The taxes upon such sales according to the month in which made would be: January, 5 cents; February, 10 cents; March, 15 cents; April, 20 cents; May, 25 cents; June, 30 cents; July, 40 cents; August, 50 cents; September, 60 cents; October, 75 cents; November, $1.00, and December, $1.00. Twelve different merchants in the same city and on the same day might sell identical sets and incur the twelve different tax liabilities just enumerated. Could any tax be more capricious?

Act Arbitrary on Its Face.

The arbitrary and discriminatory character of the Act appears upon its face. Taxes payable in various brackets and according to volumes of gross sales are as follows:

	Volume	*Rate*	*Amount*	*Total*
First	$ 100,000	1/20th of 1%	$ 50	$ 50
Second	100,000	2/20ths of 1%	100	150
Third	100,000	3/20ths of 1%	150	300
Fourth	100,000	4/20ths of 1%	200	500
Fifth	100,000	5/20ths of 1%	250	750
Sixth	100,000	6/20ths of 1%	300	1,050
Seventh	100,000	8/20ths of 1%	400	1,450
Eighth	100,000	10/20ths of 1%	500	1,950
Ninth	100,000	12/20ths of 1%	600	2,550
Tenth	100,000	15/20ths of 1%	750	3,300
Second	1,000,000	1%	10,000	13,300
Third	1,000,000	1%	10,000	23,300
Fourth	1,000,000	1%	10,000	33,300
Fifth	1,000,000	1%	10,000	43,300

Using $100,000 volume of sales as the basis of comparison, the rate of progression for the higher volumes may be thus expressed:

2 times the volume exacts	3 times the tax
3 times the volume exacts	6 times the tax
4 times the volume exacts	10 times the tax
5 times the volume exacts	15 times the tax
6 times the volume exacts	21 times the tax
7 times the volume exacts	29 times the tax
8 times the volume exacts	39 times the tax
9 times the volume exacts	51 times the tax
10 times the volume exacts	66 times the tax
20 times the volume exacts	266 times the tax
30 times the volume exacts	466 times the tax
40 times the volume exacts	666 times the tax
50 times the volume exacts	866 times the tax

Act in Operation.

Plaintiffs' Exhibit "K" (550) illustrates the practical operation of the Act. It compares the rate of tax paid by the plaintiff National Tea Company with that of twenty-three of its principal competitors throughout the State. It shows that plaintiff's maximum rate to be twenty times that of eleven of its competitors. Its average or composite rate was nearly five times that of the highest of nineteen of its competitors and was seventeen times that of eleven of its competitors.

Another instructive exhibit is Plaintiffs' Exhibit "A", the State Tax Commission's tabulation of all taxes paid under the Act up to January 1, 1936.

Even confining the comparison to relatively large chains, those (thirty-eight in number) having gross sales in 1934 in excess of $500,000, but including chains in whatever business engaged, the discriminations are equally glaring. The average or composite gross sales rates ranged from .05 per cent to .9 per cent. National Tea Company's rate was second highest, being .871 per cent, or eighteen times the lowest for this group. Arranging the thirty-eight concerns in the groups according to average rate paid from the lowest to the highest, the National Tea Company's average rate is found to be more than eight times the highest of the first ten, more than five times the highest of the first twenty, and nearly three times the average of all. (See tabulation page 85 appendix hereto.)

In most of the lines of business represented by this group of concerns, as shown by other evidence in the record, the normal or average ratio or margin of net profit in relation to gross sales is far in excess of that which obtains in the

kind of business conducted by National Tea Company, viz., sale of groceries and foods. (e. g. See Plaintiffs' Exhibit L., table 12, p. 556). Indeed the average ratio of profit of this Company for the twelve-year period from 1923 to 1934 was but .27 per cent of gross sales, less than one-third of its tax rate in 1934. (Plaintiffs' Exhibit "E", p. 546A)

Comparison of rates paid by the plaintiff Allied Stores Corporation with other chain store merchants brings out a disparity of the same general character and degree as those affecting the National Tea Company. Its average rate was third highest. (Plaintiffs' Exhibit "A", pp. 589-596)

The light thus briefly thrown upon the operation and effect of the Act is enough to demonstrate its arbitrary and discriminatory character. The rates and amounts of tax upon those falling within the various brackets, relatively considered, rest upon no conceivable difference having a fair and substantial relation to the object of the legislation, whatever that object may be assumed to be, nor do they accord like treatment to persons similarly situated. Obviously there is no relation between the rate of tax and ratio of profit. We have here no question of adjustment of rates "with mathematical nicety." Anyone can say upon the face of the law that there is no adjustment or relation of rates to probable profit ratios or other advantage even within the widest range of tolerance. There can be no such pretense.

The State has argued that there is some evidence that the ratio of profit increases with volume of gross sales. The evidence is overwhelmingly to the contrary, and the court found to the contrary. Even assuming some such tendency, it is not, and we think will not be contended that there is

any semblance of correspondence between the *extent* of this tendency and the progression of rates under the law. The average or composite rate on five illustrative volumes of sales per annum are:

$ 100,000	.05	per cent
300,000	.1	per cent
1,000,000	.3	per cent
2,000,000	.665	per cent
5,000,000	.866	per cent

Certainly neither the legislature nor anyone else ever supposed that, because of difference in volume, the percentage of profit to sales in a $300,000 annual business was twice the percentage of a $100,000 business, or that a merchant having a $2,000,000 business would make more than twice the percentage of profit which would be obtained in a $1,000,000 business, or that in a $5,000,000 business the ratio of profit would be more than sixteen times the ratio which would be expected in a $100,000 business. The latter would mean that if a $100,000 grocery business had a net profit margin of two per cent (normal according to the evidence), a $5,000,000 grocery business would have to have a profit ratio of more than thirty-two per cent. The absurdity into which the analysis runs demonstrates not only that there is no possible correspondence between profit ratios and the upward progression of rates but also that the Act represents no legislative effort or intention of relating rates or taxes to any such factors.

If this be a privilege tax, as the State asserts, the classification is unjustifiable. While the amount of a privilege tax need not be adjusted with accuracy to the value of the

privilege, it must bear some reasonable relation thereto. *Air-way Corporation v. Day*, 266 U. S. 71.

Let the matter be considered from the standpoint of the individual sales which are the subject of the tax. Is there any difference between the sale of a loaf of bread or a pound of coffee in January as compared with the sale of a loaf of the same bread or a pound of the same coffee in July which could justify the application of different rates? The July sale may take a rate of tax twenty times as great as that of January. Does the value or importance of or profit upon a sale of any given article in any way depend upon how large an aggregate volume of sales the merchant may have previously made in the same year? Upon what possible basis can the last sale in December be made to bear a rate of tax twenty times as great as that upon the first sale in January—less than twenty-four hours later? No view as to the nature of the tax can reconcile such results with proper classification. There is no difference in the nature of the acts which occasions the tax, in the value of the privilege (if the tax be deemed upon the privilege) or in ability to pay. Ability to pay, if that be deemed a proper consideration, must be the ability to pay which is derived from the transaction in question, not the ability which arises generally from the taxpayer's resources or income.

The Act manifestly evidences a purely arbitrary and whimsical graduation of rates. It is thus brought within the condemnation of the following cases:

KENTUCKY CASE.

Stewart Dry Goods Co. v. Lewis, 294 U. S. 550.

The Kentucky Act held void in this case was identical with the Minnesota Act in every particular material to the question of its constitutionality. However, from a factual standpoint the record in the present case presents much stronger ground of invalidity than was presented in the Kentucky case. This will be considered further in discussing the minority opinion in the latter case. The Kentucky Act, like that of Minnesota, imposed a graduated gross sales tax. The minimum and maximum rates under the two Acts were identical. Generally speaking, the rates in the lower brackets were somewhat higher than the Minnesota rates, and the rates in the higher brackets were somewhat lower. The Kentucky Act was held void for violation of the equal protection clause of the Fourteenth Amendment of the Federal Constitution. The classification of merchants on the basis of volume of gross sales for the imposition of a graduated gross sales tax was held to be arbitrary, unequal, and discriminatory. Considered to be decisive against the validity of the Act was the absence of any reasonable or constant relation between volume of gross sales and rate or ratio of net profit. It was not in that case, and is not in the present case, a question of whether aggregate profits increase with volume of sales. The question was and is whether there is an increase in *ratio* of profit with an increase in volume of sales in correspondence with the graduation upward of the rates.

From an examination of the opinion of this Court in the Kentucky case, it can be readily seen that every fact, every feature of the law, and every consideration which led to

the condemnation of the Kentucky Act has a complete parallel in the present case as reflected in the record and the decisions of the courts below. It probably is needless to compare the two cases point by point. The State claims but one distinction between the cases. (State's brief, pp. 103-4). The suggestion is that the Kentucky Act applied to all stores, and that the tax was therefore not strictly a chain store tax. The supposed distinction is irrelevant and invalid. The Kentucky Act was held unconstitutional not because it applied to single stores as well as to chain stores or because it failed to classify chain stores separately from single stores. It was held void because it classified retail merchants for a graduated imposition by the use of gross sales as the gradient. The vice in the Act would be present whether the tax was on single stores, on chain stores, or on both. It will not, we think, be said that there is any closer relationship between gross sales and rate of net profit in the case of chain stores than in the case of single stores. If not, how could the elimination of single stores improve the Act from a constitutional standpoint? With respect to those remaining within the scope of the Act, it would be open to the same charge of discrimination and inequality that it was before and would be equally indefensible. Chain store owners as between themselves are entitled to equal protection of the laws, whether the discriminatory law complained of does or does not also apply to the owners of single stores. Otherwise stated, the discrimination under the Kentucky Act was not one that applied in any sense as *between* single store retailers as a class and chain store retailers as a class. It applied equally to both. It applied just as clearly between the owner of two stores and the owner of three stores, or between the owner of three stores

and the owner of three hundred stores, as it did between the owner of one store and the owner of any other number of stores. The discrimination was between retailers having different volumes of gross sales subjecting them to different rates in a graduated scale. Equal protection of the laws and uniformity of taxes upon the same class of subjects require not only that the primary classification shall be justified by differences germane to the purpose of the law, but also that all those within a given primary class shall be accorded like treatment. *Cotting v. Kansas City Stock Yards Co.*, 183 U. S. 79; *Airways Corporation v. Day*, 266 U. S. 71; *Cumberland Coal Co. v. Board of Revision*, 284 U. S. 23; *Mutual Benefit Life Insurance Co. v. Martin*, 104 Minn. 179, 116 N. W. 572; *State ex rel. Mudeking v. Parr*, 109 Minn. 147, 123 N. W. 408; *State v. Pocock*, 161 Minn, 376, 201 N. W. 610. The rule has been aptly expressed by the Supreme Court of Minnesota as follows:

> "While a statute may be limited in its operation to a specified class, to be valid it must apply alike to all who are within that class and must not exclude from its operation any who are under the same conditions and in the same situation as those to whom it applies."
>
> *State v. Luscher*, 157 Minn. 192, 194, 195 N. W. 914, 915.

And again:

> "It has been sometimes loosely stated that special legislation is not class, if all persons brought under its influence are treated alike under the same conditions.' But this is only half the truth. No only must it treat alike, under the same conditions, all who are brought 'within its influence,' but in its classification

it must bring within its influence all who are under the same conditions."

Johnson v. St. P. & D. R. Co., 43 Minn. 222, 224, 45 N. W. 156, 157.

In asking this Court to overrule its decision in the Kentucky case, the State places great stress upon the dissenting opinion in that case. In this connection we desire to point out that the present case presents a very different situation for application of the minority view than did the Kentucky case. In the latter case the federal district court below had sustained the Kentucky Act. The minority view was, in essence, that the decision below could be affirmed and the Act sustained on the theory that the record permitted the conclusion that there was a relation of correspondence between the amount of business done and capacity to pay the tax, and that it was at least open to question as to whether there was not an increase in profit ratio corresponding with increase in volume of sales. The court below apparently had made no finding on this point, the evidence being in conflict, but had found that "as a general proposition, increased volume of sales results in increased profits and increased ability to pay the tax." At the outset the minority opinion of this Court pointed out that the Kentucky Act had been held valid by the Supreme Court of Kentucky in the case of *Moore v. State Board of Charities and Correction*, 239 Ky. 729, 40 S. W. (2d) 349. In its decision in that case the Supreme Court of Kentucky found as follows:

"Thus the proof establishes that the ratio of net gain either to sales or to capital invested is very much higher in the case of large scale merchants than in the case of small scale ones, whether the large scale ones

be of the chain store type, or of the department store type, or even of the specialty store type."

Thus there was in the Kentucky case a situation directly opposite to that in the case at bar, in which the evidence in the record, the findings of the trial court, and the decision of the state supreme court all establish beyond dispute (for the purposes of this case at least) that there is no relationship between volume of sales and rate or percentage of profit. Also there is the further general finding and determination that the classification resulting from the graduation of rates is "without relation to the purpose of the Act and without relation to the value of the privilege for which the tax is exacted" (50; 83). This was one of the findings which the Supreme Court regarded as being of "controlling importance" (205 Minn. 446). Elsewhere the Supreme Court stated the issue thus (448):

> "So the question is: Does this classification rest upon any ground having a rational relation to the subject of the enactment?"

The court then proceeded to apply every test deemed determinative, with a negative conclusion as to each. It declared in part:

> "Obviously the tax is not one in the nature of earnings, income, or profits. The element of profit, income, or earnings is not considered in fixing the tax because sales wholly unprofitable or even if entailing a loss are taxed exactly upon the same basis as profitable sales. * * * If it were to be considered a tax on sales the same lack of justifying relationship exists, since the rate applicable to each sale depends upon the number and size of preceding sales in the taxable year. Nor is it a privilege tax, since the amount of tax bears no relation to the value of the privilege. The different own-

ers are taxed at different rates for performing the same act, the tax being dependent upon the frequency and amount of the various sales during the tax period. * * * *"

Thus, it will be seen that the record against the validity of the Minnesota Act goes far beyond the record submitted to this Court in the Kentucky case, upon which both majority and minority opinions were in that case based.

IOWA CASE.

Great Atlantic & Pacific Tea Co. v. Valentine, 299 U. S. 32 (12 F. Supp. 760).

The State does not claim that there is any material distinction between the facts of this case and those of the case at bar. It impliedly admits that this Court cannot reverse the present case without overruling its decision in the Iowa case. The ground upon which the State claims to distinguish the Kentucky case is absent. The Iowa tax, like that of Minnesota, was a combination of specific (per store) tax and a graduated gross sales tax, and was imposed admittedly with respect only to chain stores.

A statutory three judge federal district court held the specific tax valid but struck down the gross sales tax on the authority of the decision of this Court in the Kentucky case. The gist of the opinion on the gross sales features of the tax appears from the following language of the court:

"While the Iowa chain store tax law here under consideration is in some particulars different from the Kentucky statute under consideration by the Supreme Court in the Stewart Case, supra, we are of the opinion that as we find and have found that there are similar controlling facts in the two cases, that this case is

governed by the pronouncements in the Stewart Case.

The classifications are different, as in the case at bar the tax under consideration is only imposed upon retail stores having more than one separate unit, while under the Kentucky statute the classification included all retail stores. * * * Another difference is that the Kentucky statute provided for a percentage tax on each graduated classification of gross sales, while under the Iowa law the tax is a flat amount on each such graduated classification.

In these particulars the cases are different, but we are unable to say that such differences permit the escape of a similar condemnation as being arbitrary and discriminatory under the pronouncements in the Stewart Case. * * * The limitation in the classification to the taxation of chain stores only could not change the nature of the tax, and this would be true, giving consideration to the distinctive business species of the chain stores and all economic and welfare questions which are brought about by their advantages in making sales. Such questions might well bear on the propriety of the classification, but not on what constitutes the form or nature of a tax."

This decision was affirmed by this Court in a per curiam opinion upon the authority of its decision in the Kentucky case. *Valentine, et al. v. Great Atlantic & Pacific Tea Co.*, 299 U. S. 32.

This disposes of any contention that the principle of the decision of this Court in the Kentucky case does not extend to what is strictly and technically a chain store tax.

WISCONSIN CASE.

Ed. Schuster & Co. v. Henry,
Wadhams Oil Co. v. Same, 218 Wis. 506, 261 N. W. 20.

This again is a case indistinguishable from the case at bar. It involved a graduated gross sales tax upon chain stores. Although it was styled a tax upon "gross income," the Supreme Court of Wisconsin held "gross income" as defined by the Act to be in fact gross sales. The tax was held to be in violation of the equal protection clause of the Fourteenth Amendment of the Federal Constitution, the Court relying largely on the *Stewart* (Kentucky) case.

That the factual basis for the decision corresponds with that in the case at bar is plainly indicated by the following excerpt from the opinion of the court in reference to certain allegations of the complaint and the conclusions to be drawn therefrom:

> "Those statistics all demonstrate that there is no constant or reasonable relation between gross income and net income or between the gross income and the size, in so far as the number of stores is concerned, of an integrated chain, or between its gross income and its ability to pay a tax imposed at rates increased progressively for the higher brackets of its gross income, and that consequently there is no reasonable relation between such graduations in the rate of taxation and the actual relative value to the parties taxed of the privilege which is enjoyed by each of them as an operator of a chain store, and which constitutes the subject that is taxed. * * *"

The contention made by the State in the present case that the *Stewart* case is distinguishable on the ground that the Kentucky tax was not purely a chain store tax but ap-

plied to all stores was made in the Wisconsin case and disposed of as follows:

> "Although upon its face the Kentucky statute differs from section 76.75, Stats., in that, while under the Kentucky statute a retail merchant operating but one store is likewise subjected to the tax, under section 76.75, Stats., only those operating two or more stores under the same general management, supervision, or ownership are to be taxed, that difference does not constitute such a material distinction in the legal consequences under the statutes as to obviate the vice because of arbitrary and unreasonable discrimination between the proprietors who are included in the taxed class under section 76.75, Stats. * * *"

Application by the State to this Court for writ of certiorari was denied. *Henry v. Wadhams Oil Co.*, 296 U. S. 625.

VERMONT CASE.

Great Atlantic & Pacific Tea Co. v. Harvey, 107 Vt. 215, 177 A. 423.

The Vermont tax, like that of Kentucky, was a graduated gross sales tax applicable to all retail merchants. In declaring the law unconstitutional and void, the Supreme Court of Vermont said:

> "It serves no purpose to determine the nature of this tax whether a 'chain store tax' or not, or whether an excise tax or a tax upon property. The fundamental question has been decided since the argument of this case, by the Supreme Court of the United States in Stewart Dry Goods Co., et al., 55 S. Ct. 525, * * * in which the validity of the gross sales tax of Kentucky was in issue."

FLORIDA CASE.

Lee Drug Stores v. Lee, (D. C. N. D. Fla.) 11 F. Supp. 672.

Subdivision B of Section 4 of the Florida Act imposed a so-called graduated gross receipts tax, graduated not according to volume of sales but according to number of stores operated by each merchant, the rates ranging from one-half of one per cent of gross receipts on the operator of one store to five per cent of gross receipts on the operator of more than fifteen stores. A statutory three judge federal district court held the graduated gross receipts tax invalid as being in violation of the Fourteenth Amendment of the Federal Constitution—so plainly so as to render any discussion superfluous. The court said.

> "It is unnecessary to discuss subdivision B of section 4 of the act, because the decision in Stewart Dry Goods Co. v. Lewis, 55 S. Ct. 525, 79 L. Ed. 1054, decided March 11, 1935, by the Supreme Court of the United States, fully sustains the contention of plaintiffs that subdivision B of section 4 of the act is so arbitrary, unreasonable, and discriminatory that it denies to these plaintiffs equal protection of the law guaranteed by the Fourteenth Amendment of the United States Constitution."

NEW MEXICO CASE.

Safeway Stores Incorporated v. Vigil, 40 N. M. 190, 57 P. (2d) 287.

This case involved a so-called "license or occupation tax." It was a tax levied in specified amounts according to volume of gross sales, the amounts being graduated upward

through eleven brackets. It applied, however, only to retail dealers who sold "in small parcels, packages, bales, boxes, or other containers of whatever kind and not in gross." The court indicated the view that the graduated feature was sufficient to condemn the act under the authority of the Kentucky case, but ultimately placed its decision upon the arbitrary classification of merchants indicated by the above quotation.

Of the many other decisions of this Court condemning taxing acts because of arbitrary classification, the following are representative: *Southern Railway Co. v. Greene*, 216 U. S. 400; *Royster Guano Co. v. Virginia*, 253 U. S. 412; *Bethlehem Motors Co. v. Flynt*, 256 U. S. 421; *Kansas City Southern Ry. v. Road Improvement District*, 256 U. S. 658; *Air-Way Corporation v. Day*, 266 U. S. 71; *Louisville Gas Co. v. Coleman*, 277 U. S. 37; *Quaker City Cab Co. v. Pennsylvania*, 277 U. S. 389.

Every court, whose decision has been reported, that has considered the constitutionality of a graduated gross sales tax under the equal protection clause of the Fourteenth Amendment has condemned it, except the Federal District Court in the Kentucky case, which was reversed in this Court, and the Supreme Court of Kentucky construing the same Act. The State has cited no other decision upholding such a tax. It has cited certain decisions for which it claims analogy. One heavily emphasized is *Pacific American Fisheries v. Alaska*, 269 U. S. 269. The tax involved was a license tax upon salmon canning in Alaska. The opinion of this Court is devoted mainly to the question of the legislative power conferred by the Organic Act of Alaska. No objection to the tax was raised involving the Fourteenth Amendment. The only

constitutional claim was that the Act contravened the due process clause of the Fifth Amendment. This was disposed of very briefly in the opinion. In the statement of facts preceding the opinion of the Circuit Court of Appeals (2 F. (2d) 9), it is said that the ground upon which it was claimed that the statute contravened the Constitution of the United States was that it was an interferences with interstate commerce. This case is of little significance.

The State also cites five decisions of this Court (beginning with *State Board of Tax Commissioners v. Jackson*, 283 U. S. 527) upholding taxes on chain stores graduated according to the number of stores in the chain (State's brief, p. 69). The tax involved in each of these cases was strictly an occupational or license tax as contrasted with the gross sales tax now in question. In these occupational tax cases this Court held generally, on the records before it, that the classification of chains separately from single stores was not arbitrary but justified; that there was a relationship between the number of stores in a chain and the progression in rate of tax; that the enhancement in the value of the privilege of chain store operation arising from the addition of a store to a chain was not represented only by the added store, but extended to all stores in the chain; that the operation of a chain of stores constitutes a form and method of merchandising apart from that adapted to the practice of ordinary individually operated stores. The tax involved in these cases was distinctly a chain store tax, and the decisions were distinctly chain store decisions. The tax was radically different in nature and operation from that now under contest, which is a tax on individual sales. While the Minnesota tax is a chain store tax in the sense that it does not fall upon single store merchants, it is not

essentially so. The distinctive characteristic of chain store systems which is thought to set them apart as a separate "business species" for the purpose of taxation is multiplicity of stores. The peculiar value of the privilege taxed is said to consist in having many retail outlets in many locations under one direction and control. A true chain store tax, therefore, is one in which the amount of the tax, and the rate if graduated, depends upon the size of the chain measured by number of stores. Such factors are foreign to the sales tax. Neither the amount nor the rate of the tax bears any necessary relationship to the size of the taxpayer's chain measured by stores, either in theory or fact. A ready illustration is furnished by the two plaintiffs. National Tea Company, with 155 stores in the State, had gross sales in 1934 of $5,288,845.00 and paid a gross sales tax of $45,222.51, while for the same year Allied Stores, with two stores in the State, had gross sales of $9,714,374 and paid a gross sales tax of $40,902.38. Furthermore, in none of the occupational chain store tax cases had the taxing act before the court been condemned by the highest court or any court of the state imposing the tax. In none of them were there, as in the present case, findings and conclusions of the trial court and of the highest appellate court of the state analyzing the character, operation, and results of the tax and condemning it for inequality and determining it to be "arbitrary, unreasonable, unequal, and discriminatory, * * * without relation to the purpose of the Act and without relation to the value of the privilege for which the tax is enacted."

All of these facts and considerations set the present case apart from the occupational tax cases and show the principle of those cases to be inapplicable.

MISCELLANEOUS ASSIGNMENTS OF ERROR.

Assignment 2

Police Power.

This assignment is that:

> "The Supreme Court of Minnesota erred in considering only the revenue aspect of this tax and in failing to consider that this tax was levied also for the police power purpose of restraining undue expansion of chain stores."

This assignment is untenable for several reasons:

(1) There is no suggestion in the act and no evidence in the case that the law was passed as a police measure or other than a taxing act. It professes to be the latter. Its title reads:

> "And Act raising revenues, imposing a tax on conducting business by the system of chain stores," etc.

This Court may not indulge in any speculative assumption that the Act in purpose is something other than what it appears on its face or is shown by the evidence to be.

Of a similar claim this Court, in *Liggett v. Lee*, 288 U. S. 517, said:

> "The suggestion is made that the statute is in reality aimed solely at large corporate chains; * * * But this is to construe the act by pure speculation and not by what it says, nor by any declared purpose, nor by anything contained in the record. * * * We are not permitted to guess at any such undisclosed purpose in the minds of those who adopted the statute. Assuming power to suppress by taxation a form of organization deemed inimical to the public interest, we

can attribute no such motive to the present statute in the absence of legislative declaration or record proof."

Again:

"To attribute such a covert, hidden, and indirect purpose to those who passed the statute is in effect to charge the lawmakers with saying one thing and meaning another."

And again:

"Unequal treatment and arbitrary discrimination as between corporations and natural persons, or between different corporations, inconsistent with the declared object of the legislation, cannot be justified by the assumption that a different classification for a wholly different purpose might be valid."

(2) This argument was made in the Supreme Court below. Its opinion contains no discussion of the point. This does not signify that the point received no consideration. The State's claim was by necessary implication rejected. This may have been because the Court took the view either (a) that the Act did not represent an exercise of the policy power or (b) that as a police measure it was no more justifiable than as a tax act. The second conclusion would have been in accord with the Court's previous decisions.

State v. Parr, 109 Minn. 147, 123 N. W. 408.
State v. Pocock, 161 Minn. 376, 201 N. W. 610.
State v. Luscher, 157 Minn. 192, 195 N. W. 914.

If the first mentioned view was taken, that concludes the matter in this Court. No federal question would be involved. If the second view was taken, that also is con-

clusive at least in respect to conflict between the Act and the State Constitution.

The correct conclusion appears to be that the Supreme Court agreed with the trial court that "the Act in question is essentially a revenue measure" (43, 77). In its decision as originally filed, the trial Court found that the Act was for the purpose of raising revenue and also "in the exercise of the policy power, for the purpose of curbing the undue expansion of chain stores." On reconsideration the Court amended its decision by striking out the finding that the Act was adopted in the exercise of the police power, leaving only the finding that it was essentially a revenue measure. The Supreme Court affirmed the trial Court without taking exception to any of its findings or conclusions, and therefore must be deemed to have given them approval. It is unnecessary to again argue that the State Supreme Court's interpretation of the Act and determination of its character in respect to its being a tax or police measure is final. That point has been heretofore covered. In the Kentucky, Iowa, and Wisconsin cases similar laws were regarded as taxing acts rather than police measures. The State's claim that the Act must be regarded, in part at least, as a police regulation is predicated mainly on the presupposition that chain stores are a menace to the general welfare, and therefore it must be assumed that the legislature, in adopting the Act, was aiming to protect the public against this menace. The premise is false, as will be shown in the discussion of the next following point. The court below determined that chain stores were not inimical to the interests of the people of the State of Minnesota. This determination upon a pure question of fact is not subject to question or review in this court.

(3) Even assuming the Act to be a police measure, it is condemned by the equal protection clause of the Fourteenth Amendment of the Federal Constitution. There can be no arbitrary classification for the purpose of police regulation any more than for the purpose of taxation. Police power is not free of constitutional restraint. Its exercise must meet the test of due process and equal protection prescribed by the Fourteenth Amendment. *Cotting v. Kansas City Stock Yards Co.*, 183 U. S. 79; *Eubank v. City of Richmond*, 226 U. S. 137, *Adams v. Tanner*, 244 U. S. 590; *Adkins v. Children's Hospital*, 261 U. S. 525; *Burns Baking Co. v. Bryan*, 264 U. S. 504; *Meyer v. Nebraska*, 262 U. S. 390; *Near v. Minnesota*, 283 U. S. 697; *Southern Railway Co. v. Virginia*, 290 U. S. 190; *State v. Pocock*, 161 Minn. 376, 201 N. W. 610; *State v. Luscher*, 157 Minn. 192, 195 N. W. 914.

~~is unnecessary to again argue that the State Supreme~~

In *Eubank v. City of Richmond* what this Court said of police power is well summarized in the first headnote, which reads:

> "While the police power of the State extends not only to regulations promoting public health, morals and safety but also to those promoting public convenience and general prosperity, it has its limits and must stop when it encounters the prohibitions of the Federal Constitution."

(4) The State's position on the point as defined by its answers to plaintiffs' complaints is equivocal. The complaints allege that:

> "The said Act was adopted as and purports to be a taxation for revenue measure only" (3, 58).

This was admitted in the State's answer in each case (31-2; 68-9).

The complaints also allege:

> "Said Act was not adopted by the legislature in the exercise of the police power of the State" (3, 57).

This was denied (31-2; 68-9).

There is no affirmative allegation in the State's answers that the Act was a police measure, and its denial of a contrary allegation of the complaints is inconsistent with and contradicted by its admission that the Act was a tax measure for revenue only.

Assignment 3, with
Subdivisions (1) *to* (5), *inclusive.*

This assignment is that the Supreme Court of Minnesota erred in failing to hold that the development of chain store groups in Minnesota had certain injurious effects upon the general welfare. By this presumably is meant that the Supreme Court erred because it did not find that the trial court erred in failing to find injury to the general welfare in the development of chain stores.

The refusal of the trial Court to so find was deliberate. As stated under the last point the court originally made such finding. Upon motion to amend the court's attention was called to the lack of support for such finding in the record, whereupon these findings were stricken out (40-54; 74-87). This was assigned as error in the State Supreme Court but the assignment was not sustained. Notwithstanding all this, the State persists in twice setting out those findings in its brief (pp. 22, 52), in addition to quoting them in its assignments of error (p. 30), and treats them as

facts and argues that this Court should take judicial notice as *facts* of the matter stricken (p. 52). It is said that "uncontradicted evidence lends support to *most of them*" (p. 53), "as is fully shown in the statement of facts." That there is no substantial evidence in support of any of the findings in question "shown in the statement of facts" or otherwise will be brought out in review of evidence, p. 87-90 Appendix. The State's argument that the Act is to be regarded as a police measure rests largely upon the assumption that the so-called "facts" suggested by the stricken findings are established instead of being repudiated. For example, it says (p. 53): "When the Minnesota legislature of 1933 met to consider chain store legislation, it was confronted with the *facts* to which we have just called attention, namely," * * * and then there is recited as facts the substance of the rejected findings, and the brief continues: "With these *facts* before them, the legislature passed the Chain Store Act of 1933." And "in the light of these *facts* it is inconceivable that the Act could have been passed otherwise than for the dual purpose of raising revenue and to curb the undue expansion of chain stores. * * *"

Eliminate the false assumption that any such supposed *facts* had been established and the whole argument falls. There is nothing to impeach the conclusion of the court below that the Act is essentially a revenue measure, even were that conclusion here subject to review.

Incidentally, the State's claim of injury to the general welfare appears to rest essentially upon the conception that any growth of chain stores which tends in any degree to replace singly operated stores of necessity injures the public welfare; that chain store competition is always and

inevitably bad; that the public interest is synonymous with single store operation. The idea that chain stores' competition is successful only because people like to patronize them or that the consuming public is the beneficiary of competition between chains and individual stores does not appear to enter into the State's consideration of the general welfare.

In considering this assignment, it may be that the Supreme Court took the view (which would be correct) that the findings sought by the State could not affect the result in the case in relation to the gross sales tax. There was no issue either as to advantage of chain stores as a class (to which the State's brief has devoted much space) or as to the effect on general welfare of conducting business in that form. The constitutional objection to the graduated gross sales tax is not one of classification between chains and single stores. It is a question of arbitrary classification of chain stores as between themselves. As said by the Supreme Court in its opinion below:

> "The question is not whether chain store owners may, for taxation purposes, be validly classified separately from single store owners, but whether the imposition of a graduated gross sales tax upon all those engaged in conducting chain stores is discriminatory as between such owners, thus violating the constitutional requirement of uniformity."

In view of the nature of the issue, no finding that chain stores have advantages or are inimical to the general welfare could affect the conclusion as to the invalidity of the Act. No court, we think, has ever held that equal protection of the laws may be withdrawn from those who fall

under legislative disfavor for whatever reason, or that there may be discrimination in taxation between the members of a disfavored class, saying which is not intended as an assent to any assumption that such disfavor has existed or exists in the State of Minnesota.

Admittedly chain store systems have certain advantages over single stores, but it is also true that single stores have not a few advantages over chains. (Plaintiffs' Exhibit "N", Census of Distribution, page 9, discussing advantages and disadvantages. This page appears not to be printed. In the opinion of competent students of the subject, it is not possible to say where the balance of advantage lies (253-254).

In respect to the question of the effect of chain stores on the general welfare, while the conclusions of the courts below are not subject to review in this Court, we will nevertheless, for the Court's information, in the event it should have any desire to examine the matter, undertake to show that the action of the courts below was the only one justifiable by the record. For this purpose a review of the evidence upon the matter appears in the appendix hereto, pages 87 to 90.

Assignment 4

Composite Tax.

The State advances the theory that the gross sales tax is saved from unconstitutionality by the fact that it is coupled with the specific tax, which it is said produces a more equitable result than would the specific tax alone. This is not the question. We are concerned with the validity of the gross sales tax. That tax standing alone is

void under the decisions of this and other courts. If a void tax can ever be validated by legislative marriage with a valid tax (a novel theory), the question here would be whether the gross sales tax is rendered less iniquitous by its alleged union with the specific tax. The contrary is true. If Exhibit "K" (page 550 of the record) is examined, it will be found, for example, that the discrimination against the plaintiff National Tea Company, as compared with its competitors, resulting from the gross sales tax exaction is in almost every instance aggravated rather than lessened by the inclusion of the specific tax. Any tendency of the specific tax to compensate for inequality in the gross sales tax would be purely accidental. As between two taxpayers having different volumes of gross sales, it obviously would occur only if the one having the larger volume of sales had the smaller number of stores, the reverse of which would be true in the generality of cases. Even if the influence of the specific tax could properly be taken into account in passing judgment upon the gross sales tax, the effect on the whole would be adverse rather than favorable. Any tendency in given cases for the specific tax to offset the inequality of the gross sales tax, would at best be haphazard, irregular, and ineffective to materially overcome the discrimination inherent in the gross sales tax. How feeble the equalizing influence, if any, of the specific tax would be may be judged from the fact that for 1934, the only full year for which both specific and gross sales taxes were generally paid, the gross sales taxes collected constituted eighty-nine per cent (89%) of all taxes collected under the Act. (See Plaintiff's Exhibit A, 589-596).

The gross sales tax and the specific tax are not in any real sense a "composite" tax. The Court below in its conclusions of law referred to the Act as imposing a "composite occupational tax." The inaccuracy of the characterization appears on the face of the Act. That the Court did not recognize any real interpendence or interrelation between the two features of the Act is shown by its holding one valid and the other void, and by its finding that "the provisions of the Act imposing and providing for the collection of a gross sales tax are separable from the rest of the Act."

Except that they have certain administrative provisions in common and that the proceeds are appropriated to a common purpose, there is no unity between the specific and gross sales taxes, any more than if imposed by separate acts. The two taxes are different in principle; they are imposed by separate subdivisions. The specific tax is payable annually in advance, the gross sales tax annually for the calendar year preceding payment. The gross sales tax is payable on all gross sales made in the taxable year while the specific tax is computed solely on the number of stores in operation July 1 of each year. A chain might therefore be liable for a gross sales tax without any liability for a specific tax. Returns of gross sales are required but not of stores. This, however, probably was an oversight. The fact that both taxes are in form imposed by one act does not assimilate them into one tax.

In neither the Iowa nor the Florida case did the fact that the graduated gross sales tax was enacted in combination with a specific tax save it from unconstitutionality.

Assignment 5.

What the Supreme Court said as to the tax being an excise on individual sales is precisely what was said of similar taxes by this Court in the Kentucky case, by the Federal District Court of Iowa in the *Valentine* case, and by the Supreme Court of Wisconsin in the *Schuster* case.

Assignment 6.

This asserts the claim that the Supreme Court erred in holding that the gross sales tax is not a privilege tax. In discussing this assignment (State's brief, p. 117), the State argues that the Supreme Court did not so hold; that it merely held that the gross sales tax was not a *valid* privilege tax. This interpretation of the language of the court seems to be the reasonable and correct interpretation. In the passage from the opinion referred to, the court was testing the validity of the Act on all possible theories as to the nature of the tax, and concluded that on no theory could it be held valid. It declared the tax to be an excise on individual sales, but made no determination as to whether it could be properly regarded as a "privilege" tax. Whether it was such does not appear to be of any particular importance on the question of validity. As a privilege tax, as heretofore shown, the classification or rate or amount of tax bears no relation to the value of the privilege.

The other assignments have been covered heretofore.

From the foregoing it appears that the Act offends the Equal Protection clause of the Fourteenth Amendment, and if this Court exercises jurisdiction to determine the

constitutional question involved the decision below should be affirmed.

Respectfully submitted,

MICHAEL J. DOHERTY,
WILFRID E. RUMBLE,
WILLIAM MITCHELL,
Attorneys for Respondent,
E-1006 First National Bank Building,
Saint Paul, Minnesota.

APPENDIX.

Analysis of Plaintiffs' Evidence Supporting the Findings of the Trial Court, Quoted on Pages 29 to 31 Hereof, and Review of Testimony Relied Upon by Defendant on the Issues Covered by Those Findings.

The competitive situation in the State of Minnesota of the National Tea Company was thoroughly covered by the testimony of the following witnesses: Waldemar John Larson, branch manager of the Company (90-94), William A. Pfister (121-139), Nels D. Coryden (136-150), Frank Steigler (184-188; 192-194), all district supervisors, and the situation of Allied Stores Corporation by Stanley Roth, vice president and managing director of the Golden Rule Department Store in Saint Paul (207-211), and Howard R. Malcolm, treasurer and comptroller of the L. S. Donaldson Department Store in Minneapolis (280-283).

PAUL D. CONVERSE was and for twelve years had been professor of marketing in the University of Illinois. He had devoted twenty-one years to the study of retail distribution, with considerable special attention to marketing by chain stores. He was the author of five books and many articles on marketing, selling policy, and distribution.

He testified that there does not seem to be any relation between volume of sales and ratio of net profit; that there are wide variations from year to year in the ratio of net profit in any line of retail business, wide variations in the ratio of net profit between retail concerns in the same line of business in the same place and period, and variations between the average profit ratio in any given line of retail business as compared with other lines. Among the factors producing such variations, the witness mentioned the influence of changing commodity prices and the lack of uniformity in the effect of this factor upon different lines of business; also the operating expense factor, the percentage of which, in relation to sales, the witness observed, tended to increase after leaving small stores until the $20,000 volume level was reached, from which point it went down until after passing the $30,000 volume class, and then again went up. (248-254).

H. R. GERWIG was a professional statistician and analyst of financial statements and investment securities, specializing in the analysis of leading chain store companies in all lines of business and in making reports thereon covering the subjects of sales, net profits, and related matter. Speaking from long experience in this line of activity, he testified, in substance, as follows:

All his studies indicated an absence of any uniformity in percentage of net profit to gross sales as between different lines of business. For example, in 1934 chain grocers averaged less than two per cent, while chain variety stores ranged in excess of six per cent. Chain stores in the shoe, furniture, and drug business would range between those figures. The same differences would be found in any previous or subsequent years. There are wide differences in the percentage of profit realized in any given line of business from year to year as well as in the ratio of profit earned by different companies or firms in the same line of business in any given year. The average of chain store grocery concerns for 1934 of somewhat less than two per cent included companies operating at a loss as well as companies showing a profit in excess of three per cent. These differences are typical. No definite relation can be established. The Great Atlantic & Pacific Tea Company in 1915 earned in excess of four per cent on its sales, a figure which the company has never since equaled although its sales have multiplied forty times over what they were in 1915. There is no relation between volume of gross sales and ratio of net profit for any business concern, be it a single store or a chain. Liggetts, the largest drug store chain, was forced by losses into receivership, while Walgreens, the second largest, had splendid success. Concerns smaller than Walgreens earn a larger percentage of profit. The largest concern in any chain store system as a rule earns the smallest percentage of profit to sales. It seems to be the penalty for becoming large. As respects a growing concern, the general rule to be sensed is that the larger a chain's sales become in dollars, the smaller the percentage of profit to

sales seems to become. There will be variations between years, but the trend will be downward (215-221).

To illustrate his testimony, Mr. Gerwig prepared a series of tabulations, which were introduced as Plaintiff's Exhibit "O," record, pages 648 to 665. These tabulations contrast the gross sales and net profit ratios for the years 1932, 1933, and 1934 of twenty leading department store chains (except that for 1932 the number was nineteen), eight leading drug store chains (except that for 1932 the number was six), eighteen leading grocery chains, and ten leading variety store chains (except that number for 1932 was nine). The range of profit ratios for the years mentioned ("L" indicating loss) were as follows:

DEPARTMENT STORE CHAINS

	High	Low	Average
1932	3.49	L. 6.55	0.96
1933	7.96	L. 2.30	2.89
1934	7.61	L. 1.30	3.08

DRUG STORE CHAINS.

	High	Low	Average
1932	5.72	L. 3.64	3.35
1933	6.26	L. 5.63	3.38
1934	7.08	L. 0.51	4.93

GROCERY CHAINS.

	High	Low	Average
1932	4.18	L. 3.19	2.42
1933	6.27	L. 1.57	2.45
1934	5.79	L. 1.14	1.93

VARIETY STORE CHAINS.

	High	Low	Average
1932	6.38	L. 0.32	4.85
1933	8.34	3.21	6.91
1934	8.04	3.08	6.85

Finally the compilation sets out the sales volume, earnings history, and profit ratios of five typical large chains over periods of many years. The chains used for the purpose were The Great Atlantic & Pacific Tea Company, S. S. Kresge Company, National Tea Company, J. C. Penney Company, and The Walgreen Co. If any tendency is discernible, it is one of diminishing profit ratios with increase in volume of gross sales rather than the contrary.

JESSE S. ROBINSON was professor of economics at Carleton College, Northfield, Minnesota, which subject includes marketing of merchandise at retail. He is the author of textbooks and many articles within his field. He testified that there are wide variations in profit ratios as between different kinds of business, regardless of whether the businesses considered be those of single stores, chain stores, or of the so-called voluntary chain type; that this is true for any year examined. He described the result of a special study for the year 1933 by Professor Vaile of the

University of Minnesota in a typical Minnesota town—Waseca—which showed the profit ratios in terms of percentage of gross sales for various lines of retail business as follows:

Groceries and meats	3.31 per cent
Drugs	.39 per cent
Restaurants	13.42 per cent
Candy	2.74 per cent
Men's clothing	2.62 per cent
Farm equipment	2.27 per cent
Furniture, hardware and plumbing	1.15 per cent
Lumber, feed and fuel	2.31 per cent
Filling stations	1.65 per cent

(302-308)

STANLEY ROTH, Vice President and Managing Director of the Golden Rule in Saint Paul, gave particularly illuminating testimony on this subject, covering the ground broadly and also in particular reference to his own department store experience. We particularly commend to the attention of the Court the very intelligent testimony of this witness on pages 200 to 215 and 224 to 232 of the record. His testimony gives further certainty to the conclusion that there is no relation between the volume of sales and the rate of profit, and furnishes convincing reasons why this is true.

Testimony on this subject was also given by William E. Russell, Comptroller of the National Tea Company, based upon the experience of that company in its own business. The same conclusions were reached (105-110; f. 116-117).

There were introduced reports of the Federal Trade Commission of a study of chain store distribution conducted by direction of The Senate of the United States. The study covered generally a series of years between and including 1913 to 1930, and included such matters as sales, operating expenses, gross and net margins of profit, and the like. A number of the tables of this report are reproduced as portions of Plaintiff's Exhibit "L" on pages 621 to 623 of the record. One of the most significant of the tables in relation to the present subject is Table 12, appearing on page 623 of the record. It shows the percentage of net operating profit to sales of twenty-six lines of chain store business for the years studied. Arranging the list from the lowest to the highest, the average percentages for all years considered were as follows:

NET PROFITS IN PERCENTAGE OF GROSS SALES.

Hats and caps (Loss)	.42
Variety (unlimited)	.23
Men's furnishings	.75
Dry goods	1.15
Musical instruments	1.58
Grocery	2.10
Millinery	2.36
Men's ready-to-wear	2.39
Meat	2.45
Tobacco	2.68
Women's accessories	2.69
Groceries and meat	2.82
Variety ($5 limit)	2.88
Men's and women's shoes	3.17

Hardware	3.24
Women's shoes	3.45
General merchandise	3.66
Drugs	4.21
Women's ready-to-wear	4.35
Department store	4.45
Men's shoes	4.64
Dry goods and apparel	5.93
Confectionery	6.04
Men and women's ready-to-wear	8.84
Variety ($1 limit)	9.16
Furniture	11.46

Compared with the grocery business, in which the plaintiff National Tea Company is engaged, the ratio of net profit to sales for certain other lines as shown by this table is:

Hardware	150 per cent
Drug and department stores	200 per cent
Dry goods and apparel	250 per cent
Confectionery	300 per cent
Men's and women's ready-to-wear clothing	400 per cent
Variety stores ($1 limit)	450 per cent
Furniture	550 per cent

Table 3, page 552, shows the wide range of gross margins, operating expense ratios, net operating expense, and net profit ratios for the same twenty-six lines of business. Table 10, page 553, deals with percentages of gross margins to sales by years, and Table 11, page 554, the percentage of operating expenses to sales by years.

Table 32, page 558, deals with the percentage of net operating profit to sales by kind and size of chains for all years combined, size of chains being considered in terms of number of stores only, not by volume of sales. The Commission found a tendency for net dollar profit to increase with the number of stores in a chain in nine lines of business. For seventeen lines no such tendency was found, including seven lines showing a downward trend. The upward tendency seen by the Commission for the nine lines in question is at best very irregular and ill-defined. The Commission expressed no opinion that there was any discoverable relation in any group of chains between volume of sales and rate of profit.

Plaintiff's Exhibit "Z" (page 562) is a comparison for 1934 of sales volume, profits, rate of profit for thirty singly operated department stores and fifteen department store chains. The comparison between volume positions and the profit ratio positions for the single department stores is as follows:

Position Volume	Net Profit %	Position Volume	Net Profit %
1	11	16	28
2	17	17	1
3	21	18	9
4	19	19	23
5	15	20	12
6	13	21	4
7	7	22	14
8	10	23	29
9	6	24	5
10	20	25	22
11	30	26	24
12	2	27	26
13	27	28	18
14	3	29	16
15	25	30	8

The same comparison in respect of the department store chains shows the following:

Position Volume	Net Profit %	Position Volume	Net Profit %
1	1	9	4
2	..	10	6
3	10	11	5
4	3	12	9
5	8	13	11
6	12	14	2
7	7	15	13
8	14		

A great deal of other statistical evidence was introduced by plaintiffs negativing any correspondence between sales volume and profit ratios. Plaintiff's Exhibit "P" (665-670 D) is a report for 1934 of the Comptroller's Congress of the National Retail Dry Goods Association, a national association of department and specialty stores having several thousand members distributed over the United States (230-231). Table 3 of the report, (670 A and B) shows the greatest contrast between gross profit, expense ratios, and net profit margins in different departments and on different kinds of merchandise. These figures are typical (231). Table 7, of the report, (670 C and D) is a summary of operations of department stores for 1932 and 1933, broken down into departments and grouped according to volume of sales. Similar analysis of the operation of specialty stores is shown except that volume grouping is omitted. Various other portions of the report were introduced (665-670). The net operating results for the years 1932, 1933 and 1934 of all volume groups as shown by the exhibit were as follows (profits being indicated by "P" and losses by "L"):

Sales Volume	1932	1933	1934
$ 500,000 to $ 1,000,000	L. 7.9	L. 0.7	P. 1.3
$1,000,000 to $ 2,000,000	L. 6.6	P. 0.4	P. 0.8
$2,000,000 to $ 5,000,000	L. 5.3	L. 0.8	P. 0.1
$5,000,000 to $10,000,000	L. 5.5	L. 1.5	P. 0.4
Over $10,000,000	L. 6.1	L. 1.1	L. 0.6

A tendency appears in both the years 1933 and 1934 for the ratio of profit to run inversely to volume of sales and for the ratio of loss to increase with increase of volume.

Sundry statistics as to operating expense ratios, showing wide divergence between different kinds of business, are found in the Federal Census of Retail Distribution for Minnesota and United States. Plaintiff's Exhibits "B", "D", and "N" (597-603; 613-620; 637-647).

Plaintiff's Exhibit "Y" (561) is an illustrative comparison of the operating results for the year 1934 of twenty different departments of the Donaldson Store of Minneapolis showing a range of from nine per cent profit for notions to 26.2 per cent loss for girls' wear.

Even the State itself furnished corroboration of plaintiffs' position on this phase of the case. Joseph Strong, formerly owner of a chain of sixty to seventy millinery stores and a witness for the State, testified on cross-examination that there cannot be any relation between ratio of profit and gross sales (464).

TESTIMONY OF O. H. LANDIN.

The only witness on behalf of the State who asserted the existence of a relationship between volume of sales and rate of profit was O. H. Landin, former manager of the Minneapolis branch of the National Tea Company. The portion of his testimony on this point was as follows:

> "Q. In your connection with the chain store business, did you notice any relationship between the amount of gross sales in a given store and rate of profit from that store?
>
> "A. Yes.

"Q. What was that relationship, the rate?

"A. It would depend on the sales of the store, the bigger the sales usually the better return on the profit. The more sales you have your overhead goes down and the net profit goes up.

"Q. Was that a general experience among the majority of your stores?

"A. Yes, on many of them.

"Q. From your experience in general store business, do you know whether there is any relationship between the size of a chain and the rate of net profit in a number of stores?

"A. It would depend on how many warehouses and how much ground they cover.

"Q. If a man had one warehouse then the more stores he operated out of that warehouse the overhead would be less?

"A. But with more warehouses the overhead would be a different proposition.

"Q. As a general rule, then would you say there is a relationship between the size of the chain and the rate of net profit?

"A. Yes.

"Q. And does that rate of net profit go up and down with the size of the chain?

"A. It depends on circumstances. It would go up if you supplied 500 stores out of one warehouse. Then you show more profit than if you supply only two hundred stores out of that same warehouse. It depends if they are all in one state or one town" (363-364).

No facts or figures were furnished in support of the conclusions, such as they were, of this witness. His suggestion that the bigger the sales of a store "usually the better return on the profit" is effectively refuted by the actual figures for all National Tea Company stores in Minnesota

for a typical year—1935 (Plaintiff's Exhibit "V" (671). This exhibit is a demonstration that the amount of net profit of individual stores does not vary with the volume of sales from such stores. For example, the store showing the largest net profit is twenty-second in volume of sales, and the store showing the largest net loss is fifth in volume of sales. Similar comparisons could be made throughout the list.

On cross-examination Mr. Landin admitted that the grocery business was all he knew anything about, and that he was not presuming to give any opinion about any other line of business (405-406).

Since Mr. Landin was the principal witness for the State on this and other subjects, some comments bearing upon the weight which should be given his testimony are in order. His connection with the National Tea Company terminated in March, 1933. On the trial in April, 1936, he came into Court as a witness for the State, bringing a file of letters and papers belonging to the Company which he had taken from its office from time to time and had retained in his possession since his employment terminated. To explain his possession of these files he testified on direct and cross-examination:

"Q. Has the National Tea ever requested you to return any correspondence or invoices or letters which you have in your possession?

"A. No.

"Q. They remain in your possession simply because the National Tea has not called for them?

"A. Yes.

"Mr. Doherty: Does the National Tea Company know that you have them?

"A. I don't know, I don't think so.

"Mr. Doherty: You have no reason to believe they do know?

"A. I never thought anything about it." (323)

Most of the letters dealt with so-called confidential allowances, and Landin claimed that it was their confidential character that prompted him to take and keep them (329). Why his successor was entitled to less confidence than he with respect to them was not explained, nor did he explain the greater confidence he reposed in counsel for the State, to whom his possession of the letters was disclosed the day before he testified and to whom he delivered them the morning before he went on the witness stand (331-2). The nature of the special discounts in question was explained (415-419). The confidential communication theory failed because the letters taken and kept by Landin included letters to which even he did not extend the claim of confidence, at least not with any insistence (365). Most of the letters (Defendants Exhibits 3 to 18) had on them notations (omitted in the printing) showing that upon receipt they had passed through the hands of the office manager, apparently in routine fashion (380-7). Mr. Landin's conception of his right to appropriate these letters belonging to his former employer is significant. On cross-examination with respect to one of them he testified:

"Q. Why isn't this document in the hands of the National Tea Company?

"A. Because it was made out and given to me.

"Q. It wasn't given to you as an individual George Landin?

"A. My name isn't George, I don't like to be called George.

"Q. I apologize. What are your initials?

"A. O. H.

"Q. This letter came to you as manager of the National Tea?

"A. It might not, but I was manager at that time.

"Q. It wouldn't come to you otherwise?

"A. No, no manufacturer would have given me such information otherwise.

"Q. You aren't making any claim this came to you in any other capacity except as manager of the National Tea?

"A. No.

"Q. Therefore, it is a document that belongs to the National Tea?

"A. It doesn't belong to them.

"Q. Who does it belong to?

"A. It belongs to me.

"Q. How does it come to be your property?

"A. Because I have got it.

"Q. Anything in your possession is your property?

"A. Anything in my pocket is mine." (377)

He pretended to be an unwilling witness for the State (330-1), whereas his whole testimony showed the greatest eagerness to testify against his former employer. His testimony showed a lack of any broad comprehension upon the subjects upon which he undertook to speak. Indeed his testimony evidences a general confusion of ideas. To illustrate, he testified to certain advantage of large over small chains. An effort on cross-examination to elicit his idea as to where the line should be drawn between the two classes of chains led to the following:

"Q. There has been constant use of the term large chains and comparison is made between large chains and small chains and independents.

"A. Yes.

"Q. What do you mean by a large chain?

"A. Anyone who has two or three hundred, one thousand or fifteen hundred stores.

"Q. What is it, two or three hundred or one thousand or fifteen hundred?

"A. It is not what I mean. Anything having one hundred or more would be a large chain.

"Q. Then you have been referring to a large chain as having one hundred or more stores?

"A. I would say Thomas has a chain of 30 stores and he is as bad off as anybody.

"Q. Will you please try to follow the questions and answer them?

"A. Then I would say if you have 25 stores it is a large chain.

"Q. Are you sure you wouldn't want to go down any lower?

"A. No, a chain of less than 25 stores don't amount to an awful lot." (410-411)

To suggest that the unimpressive testimony of this witness, uncorroborated and unsupported by either facts or figures, is sufficient to raise a serious issue against the mass of contrary evidence previously reviewed, would be wholly out of reason.

SEVERITY OF DISCRIMINATION.

Plaintiff's Exhibit "K" is an analysis of the taxes paid under the Act for the year 1934 by the National Tea Company and twenty-three of its principal competitors, including those most frequently encountered throughout the State. It shows that the average or composite gross sales tax rate paid by National Tea Company was higher than that paid by any of its twenty-three competitors. The next highest rate in order paid was that of Hahn Department Stores, Incorporated (now Allied Stores Corporation). Excepting four chains, the rate paid by National Tea Company was nearly five times that of its highest competitor. Its average rate was seventeen times that of eleven of its twenty-three competitors. Its maximum rate was twenty times the maximum rate of eleven of its competitors. Only four of its competitors paid a maximum rate equal to that paid by it. Comparison of rates paid by Hahn Department Stores, Incorporated, with others on the list brings out a disparity of the same general character and degree as those affecting National Tea Company.

A comparison limited to large chains shows equally glaring discriminations. Below is a list of all chains having gross sales for 1934 in excess of $500,000 with the average or composite gross sales tax rate paid by each:

Name of Taxpayer	Kind of Business	Composite Gross Sales Tax Rate in Percentage of Gross Sales
Dayton Co.	Department stores	.050
Michaud Bros.	Foods	.050
Standard Clothing Co.	Clothing	.050
Cardozo & Bros.	Furniture	.063
New England Furniture Co.	Furniture	.066
Savage Co., M. W.	General merchandise	.076
Miner Co.	Automobiles	.100
Davis & Ruben	Furniture	.104
Motor Power Equipment Co.	Appliances	.105
International Harvester Co.	Implements	.107
Salet's Department Store	General merchandise	.121
Snyder Cut Rate Drug	Drugs	.121
Holt Motor Co.	Automobiles	.130
Salkin & Linoff	General merchandise	.131
Scott Burr Store Co.	Variety stores	.134
Witt's Market House	Foods	.142
Northern States Power Co.	Appliances	.146
Liggett Drug Co.	Drugs	.150
City Market Co., Inc.	Foods	.163
Western Auto Supply Co.	Automobile supplies	.166
Gergohgolis Economy Market	Foods	.168
Stevenson, Inc., L. T.	Women's wearing apparel	.176
Piggly Wiggly N. W. Inc.	Foods	.182
Grant, W. T. Co.	Department stores	.193
Sears Roebuck Co.	General merchandise	.279
Quality Food Stores, Inc.	General merchandise	.419
Gamble Skogmo, Inc.	Automobile supplies	.506
Rothschild & Co., M. L.	Clothing	.509
Thomas Stores, C.	Foods	.616
Kresge Co., S. S.	Variety stores	.667
Walgreen Co.	Drugs	.673
Great Atlantic & Pacific Tea Co.	Foods	.698
Red Owl Stores	Foods	.793
Montgomery Ward & Co.	General merchandise	.813
Woolworth Co., F. W.	Variety stores	.824
Hahn Department Stores	Department stores	.859
National Tea Co.	Foods	.871
Penney Co., J. C.	General merchandise	.900

This tabulation is made up from Plaintiff's Exhibit "A" (589-596), an analysis by the State Tax Commission of all taxes paid under the Act up to January 1, 1936. Even within the half million dollar volume class the rates paid by the plaintiffs National Tea Company and Hahn Department Stores were more than seventeen times higher than those of three other chains. Those paid by the remaining chains fell into various intermediate brackets.

The National Tea Company's average rate of net profit in Minnesota for the twelve-year period from 1923 to 1934 was 27 per cent of its gross sales (Plaintiff's Exhibit "E", 546). In 1934 it operated at a loss of 1.97 per cent. Its gross sales tax for 1934 was .871 per cent, which was more than three times its average profit rate for the twelve-year period. The Golden Rule Store, of Allied Stores Corporation, in 1934 operated at a loss of 1.3 per cent of sales while paying a gross sales tax of .85 per cent. It also had losses of 1.26 per cent and 3.97 per cent for the years 1929 and 1932 respectively and a profit of 0.51 per cent, 0.55 per cent and 0.17 per cent for the years 1930, 1931 and 1933 respectively. (Plaintiff's Exhibit "Q", 560).

Review of Evidence Concerning the Effect upon the General Welfare of Conducting Business by the System of Chain Stores.

On this question the State relies almost entirely, so far as the evidence goes, upon the testimony of O. H. Landin, a former employe of the plaintiff National Tea Company. In the statement of facts, where the claimed support for the State's position is said to be "fully shown" (State's brief, p. 53), reference is made solely to the testimony of this witness (State's brief, pp. 22-23).

Mr. Landin, by his own admission, was incompetent to give any general testimony upon the subject. He testified:

> "Q. You testified here about various comparisons between chain and independent stores and volunteer stores in regard to advantages. I suppose in your testimony you were referring to the grocery business?
>
> "A. That's all I know anything about.
>
> "Q. You are not presuming to give us any opinions about any other lines of business?
>
> "A. No.
>
> "Q. So we understand when you were testifying about large and small chains you were referring to chains in the grocery line only?
>
> "A. Yes." (405-406)

The State claims chain stores to be economically harmful in the following particulars:

(a) That the chains have been taking over a large portion of retail business and eliminating single stores (22; 52). This, of course, begs the question, presupposing that the general welfare is better served by single stores than it would be by chain stores. The evidence cited by the State on the point is limited to Mr. Landin's individual practice

and experience as former manager of the National Tea Company in Minnesota (354-355; State's brief, p. 23).

(b) That chains have eliminated jobbers and wholesale houses and reduced the number of traveling salesmen, and thereby added to unemployment and lessened the value of taxable property in the State (22; 52). The evidence claimed for this is again the testimony of Mr. Landin found on pages 361 and 362 of the record. The question put to him concerned the effect of the coming in of chain stores on Twin City jobbers, as to which he testified that many of them had gone out of business in the last few years; that the chains had transferred their business from local jobbers to other sources; that there were a considerable number of salesmen eliminated. To the question then asked, "Did it then add to unemployment in Minnesota?" he answered, "I think it did to some extent." On cross-examination he said of the unemployment claim, "but that is years past now." He also admitted that he thought the same thing, that is unemployment followed in the development of the volunteer or cooperative chains (438), which are classed as single stores under the Minnesota Act.

This is the character and extent of the testimony on which the State claims the court should have made a general finding that the development of chain stores had produced unemployment.

(c) That the chains have caused the farmers throughout the State to find a less ready market for their fruits and vegetable products (53). No citation to the record is given for this. The only reference to it is in the testimony of Mr. Landin, appearing on pages 355-357 of the record, to the effect that when he was manager of the National Tea Company he purchased most of his requirements of vege-

tables on the Minneapolis market "except in the summer time when we could get them from the farmers." He said the fact that he brought vegetables to country stores from the Minneapolis market would be likely to tend to lower the prices of vegetables in country towns (356). Since the practice was carried on only when the farmers themselves had no vegetables to sell, his reasoning is difficult to follow. He further testified that he got a considerably lower price than independent stores because of large scale buying, and because truckers were willing to accept lower prices in return for a sure market for their products (356). On cross-examination he testified that the great bulk of the consumption of vegetables and farm products by customers of the National Tea Company was in the large cities, who were supplied from the markets, except that in the summer time most of the farm products were bought direct from the farmers; that purchases of vegetables were made from Texas and California when they were not available in Minnesota (435). As to why the National Tea Company was able to buy below the market he admitted the reason to be that farmers preferred to take lower prices in order to avoid the necessity of "standing on the market for four or five hours disposing of it little at a time" and not being sure they could sell even then; that as a rule he bought from the same farmers year after year (436). Two other employes of the National Tea Company, including the fruit and vegetable buyer for the entire territory, testified that country stores of the Company bought locally practically all the farm produce needed so long as available, and that the practice was to pay the market price or better; that the price paid to farmers who hauled to Minneapolis was the regular Minneapolis market price;

that the same farmers have been continuously selling to the Company for as long as fifteen years and have been entirely satisfied (492-3; 495-8; 499-500). That any Court upon this testimony could have found that the chain stores have caused farmers throughout the State to find a less ready market for their fruit and vegetable products is inconceivable.

(d) That money has been drawn from country banks, thereby weakening the banking structure in rural communities.

The testimony cited in support of this is once more that of Mr. Landin, reported at pages 360 and 361 of the record, the substance of which is that when he was manager of the Minneapolis division of the National Tea Company he kept the bulk of the National Tea Company's money in Minneapolis banks. From this meager testimony as to Mr. Landin's individual practice, the State would have the Court make the broad general finding above indicated.

As to the general weight to be given any testimony of the witness Landin, some observations have already been made on pages 80 to 83 hereof, and need not be repeated. It is submitted that the court would have been justified in disregarding any uncorroborated testimony of this witness. From the sketchy and unconvincing testimony of such a witness, it would have been gross error for the court to have made the sweeping general findings proposed by the State under its assignment 3 (State's brief, p. 30).

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SUPREME COURT OF THE UNITED STATES.

No. 500.—October Term, 1939.

State of Minnesota, Petitioner,
vs.
National Tea Company and Allied Stores (Formerly Hahn Department Stores, Incorporated).

On Writ of Certiorari to the Supreme Court of the State of Minnesota.

[March 25, 1940.]

Mr. Justice Douglas delivered the opinion of the Court.

In 1933 Minnesota enacted a chain store tax (L. 1933, c. 213) one item of which was a tax on gross sales. Sec. 2(b). The gross sales tax was graduated: one-twentieth of one per cent was applied on that portion of gross sales not in excess of $100,000; and larger percentages were applied as the volume of gross sales increased, until one per cent was exacted on that portion of gross sales in excess of $1,000,000. Respondents (chain stores conducting retail businesses in Minnesota) paid under protest the gross sales tax demanded by the Minnesota Tax Commission for the years 1933 and 1934 and thereafter sued in the state court for refunds.[1] Judgments granting refunds were affirmed by the Supreme Court of Minnesota, 205 Minn. 443. We granted certiorari because of the importance of the constitutional issues involved in *Stewart Dry Goods Co.* v. *Lewis*, 294 U. S. 550 and *Valentine* v. *Great Atlantic & Pacific Tea Co.*, 299 U. S. 32, which cases, it was asserted, controlled the decision below.

At the threshold of an inquiry into the applicability of the *Stewart* and *Valentine* cases to these facts, we are met with a question which is decisive of the present petition. That is the question of jurisdiction.

[1] Extra Sess. L. 1933-1934, c. 16, § 1. Respondents also paid under protest that portion of the chain store tax which was based upon the numbe of stores within the state. L. 1933, c. 213, § 2(a). That item of the composite tax was upheld by the lower court in Minnesota from which no appeal was taken. The gross sales feature of the 1933 chain store tax was eliminated in 1937. Extra Sess. L. 1937, c. 93.

The Supreme Court of Minnesota discussed not only the equal protection clause of the Fourteenth Amendment of the federal constitution but also Art. 9, § 1 of the Minnesota constitution which provides: "Taxes shall be uniform upon the same class of subjects . . . ." It said that "these provisions of the Federal and State Constitutions impose identical restrictions upon the legislative power of the state in respect to classification for purposes of taxation."[2] It stated that the "question is . . . whether the imposition of a graduated gross sales tax upon all those engaged in conducting chain stores is discriminatory as between such owners, thus violating the constitutional requirement of uniformity." It quoted the conclusion of the lower Minnesota court that the statute violated both the federal and the state constitution. It then adverted briefly to three of its former decisions which had interpreted Art. 9, § 1 of the Minnesota constitution and quoted from one of them.[3] It merely added: 'So much for our own cases'; and proceeded at once to a discussion of cases based solely on the Fourteenth Amendment of the federal constitution. While its discussion of Art. 9, § 1 of the Minnesota constitution was in general terms, its analysis of the Fourteenth Amendment was specifically related to chain store taxation. It distinguished decisions of this Court which held that the number of stores in a given chain affords an appropriate basis for classification for imposition of progressively higher taxes.[4] It then stated that the "precise question here presented" had been directly passed upon adversely to the state's contention in five cases: *Stewart Dry Goods Co. v. Lewis, supra; Valentine* v. *Great Atlantic & Pacific Tea Co.*,

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[2] 205 Minn., p. 447. The court here cited Reed v. Bjornson, 191 Minn. 254.

[3] This reference to Minnesota constitutional law was limited to the following:

"Our cases hold (and that is the general rule) that the legislature 'has a wide discretion in classifying property for the purposes of taxation, but the classification must be based on differences which furnish a reasonable ground for making a distinction between the several classes. The differences must not be so wanting in substance that the classification results in permitting one to escape a burden imposed on another under substantially similar circumstances and conditions. The rule of uniformity, established by the Constitution, requires that all similarly situated shall be treated alike.' State v. Minnesota Farmers Mut. Ins. Co., 145 Minn. 231, 234, 176 N. W. 756, 757; State *ex rel.* Mudeking v. Parr, 109 Minn. 147, 152, 123 N. W. 408, 134 A. S. R. 759; In re Improvement of Third Street, 185 Minn. 170, 240 N. W. 355."

[4] State Board of Tax Commissioners v. Jackson, 283 U. S. 527; Liggett Co. v. Lee, 288 U. S. 517; Fox v. Standard Oil Co., 294 U. S. 87; Great Atlantic and Pacific Tea Co. v. Grosjean, 301 U. S. 412.

supra; Ed. Schuster & Co. v. *Henry*, 218 Wis. 506; *Lane Drug Stores, Inc.* v. *Lee*, 11 F. Supp. 672; *Great Atlantic & Pacific Tea Co.* v. *Harvey*, 107 Vt. 215. It added that the tax here involved was on all fours with that struck down by this court in *Stewart Dry Goods Co.* v. *Lewis, supra.* It quoted with approval from the opinion in *Ed. Schuster & Co.* v. *Henry, supra.* And it concluded with the following statement:

"*We think the five cases to which we have referred have so definitely and finally disposed of the legal problem presented* as to make it needless for us to analyze or discuss the great number of other tax cases where the same constitutional question was involved. These being the only cases to which our attention has been called *directly deciding the question presented* we are of opinion that we should follow them and *that it is our duty so to do.*"[5] (Italics added.)

Respondents contend that the court held the statute invalid for violation not only of the federal constitution but also of the state constitution. Hence they seek to invoke the familiar rule that where a judgment of a state court rests on two grounds, one involving a federal question and the other not, this Court will not take jurisdiction. *Fox Film Corp.* v. *Muller*, 296 U. S. 207; *Lynch* v. *New York ex rel. Pierson*, 293 U. S. 52; *New York City* v. *Central Savings Bank*, 306 U. S. 661. In support of this position they point to the court's discussion of the Minnesota constitution and to the fact that the syllabus states that such a tax is violative of both the federal and state constitutions.[6] But as to the latter, we are not referred to any Minnesota authority which, as in some states,[7] makes the syllabi the law of the case. And as to the former the opinion is quite inconclusive. For the opinion as a whole leaves the impression that the court probably felt constrained to rule as it did because of the five decisions which it cited and which held such gross sales taxes unconstitutional by reason of the Fourteenth Amendment. That is at least the meaning, if the words used are taken literally. For if, as stated by the court, the "precise question here presented" was ruled by those five cases, that question was a federal one. And in that connection it is perhaps significant that the court stated not only

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[5] 205 Minn., p. 451.

[6] By statute the court is required to prepare the syllabus. Mason's Minn. Stats. 1927, § 134.

[7] See State v. Hauser, 101 Oh. St. 404, 407; Hart v. Andrews, 103 Oh. St. 218, 221; Thackery v. Helfrich, 123 Oh. St. 334, 336.

that it "should follow" those decisions but that "it is our duty so to do."

Enough has been said to demonstrate that there is considerable uncertainty as to the precise grounds for the decision. That is sufficient reason for us to decline at this time to review the federal question asserted to be present, *Honeyman* v. *Hanan*, 300 U. S. 14, consistently with the policy of not passing upon questions of a constitutional nature which are not clearly necessary to a decision of the case.

But that does not mean that we should dismiss the petition. This Court has frequently held that in the exercise of its appellate jurisdiction it has the power not only to correct errors of law in the judgment under review but also to make such disposition of the case as justice requires. *State Tax Commission* v. *Van Cott*, 306 U. S. 511; *Patterson* v. *Alabama*, 294 U. S. 600. That principle has been applied to cases coming from state courts where supervening changes had occurred since entry of the judgment, where the record failed adequately to state the facts underlying a decision of the federal question, and where the grounds of the state decision were obscure. *Honeyman* v. *Hanan*, *supra*, and cases there cited. That principle was also applied in *State Tax Commission* v. *Van Cott*, *supra*, where it was said, p. 514:

"... if the state court did in fact intend alternatively to base its decision upon the state statute and upon an immunity it thought granted by the Constitution as interpreted by this Court, these two grounds are so interwoven that we are unable to conclude that the judgment rests upon an independent interpretation of the state law."

The procedure in those cases was to vacate the judgment and to remand the cause for further proceedings, so that the federal question might be dissected out or the state and federal questions clearly separated.

In this type of case we deem it essential that this procedure be followed. It is possible that the state court employed the decisions under the federal constitution merely as persuasive authorities for its independent interpretation of the state constitution. If that were true, we would have no jurisdiction to review. *State Tax Commission* v. *Van Cott*, *supra*. On the other hand we cannot be content with a dismissal of the petition where there is strong indication, as here,

that the federal constitution as judicially construed controlled the decision below.

If a state court merely said that [illegible] the Fourteenth Amendment, as construed by this Court, is the "supreme law of the land" to which obedience must be given, our jurisdiction would seem to be inescapable. And that would follow though the state court might have given, if it had chosen, a different construction to an identical provision in the state constitution. But the Minnesota Supreme Court did not take such an unequivocal position. On the other hand, it did not declare its independence of the decisions of this Court, when the state constitutional provision avowedly had identity of scope with the relevant clause of the Fourteenth Amendment. In the latter respect this case differs from *New York City* v. *Central Savings Bank, supra.* The cases in which the New York Court of Appeals professes to go on both the state and federal due process clauses clearly rest upon an adequate nonfederal ground. For that court has ruled that its own conception of due process governs, though the same phrase in the federal constitution may have been given different scope by decisions of this Court. See *Ives* v. *The South Buffalo Railway Co.*, 201 N. Y. 271, 317. The instant case therefore presents an intermediate situation to which an application of the procedure followed in *State Tax Commission* v. *Van Cott, supra,* is peculiarly appropriate.

It is important that this Court not indulge in needless dissertations on constitutional law. It is fundamental that state courts be left free and unfettered by us in interpreting their state constitutions. But it is equally important that ambiguous or obscure adjudications by state courts do not stand as barriers to a determination by this Court of the validity under the federal constitution of state action. Intelligent exercise of our appellate powers compels us to ask for the elimination of the obscurities and ambiguities from the opinions in such cases. Only then can we ascertain whether or not our jurisdiction to review should be invoked. Only by that procedure can the responsibility for striking down or upholding state legislation be fairly placed. For no other course assures that important federal issues, such as have been argued here, will reach this Court for adjudication; that state courts will not be the final arbiters of important issues under the federal constitution; and that we will not encroach on the constitutional jurisdiction of the

states. This is not a mere technical rule nor a rule for our convenience. It touches the division of authority between state courts and this Court and is of equal importance to each. Only by such explicitness can the highest courts of the states and this Court keep within the bounds of their respective jurisdictions.

For these reasons we vacate the judgment of the Supreme Court of Minnesota and remand the cause to that court for further proceedings.

It is so ordered.

Mr. Justice McREYNOLDS took no part in the decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.

SUPREME COURT OF THE UNITED STATES.

No. 500.—October Term, 1939.

State of Minnesota, Petitioner,
vs.
National Tea Company and Allied Stores Corporation (formerly Hahn Department Stores, Incorporated).

On Writ of Certiorari to the Supreme Court of the State of Minnesota.

[March 25, 1940.]

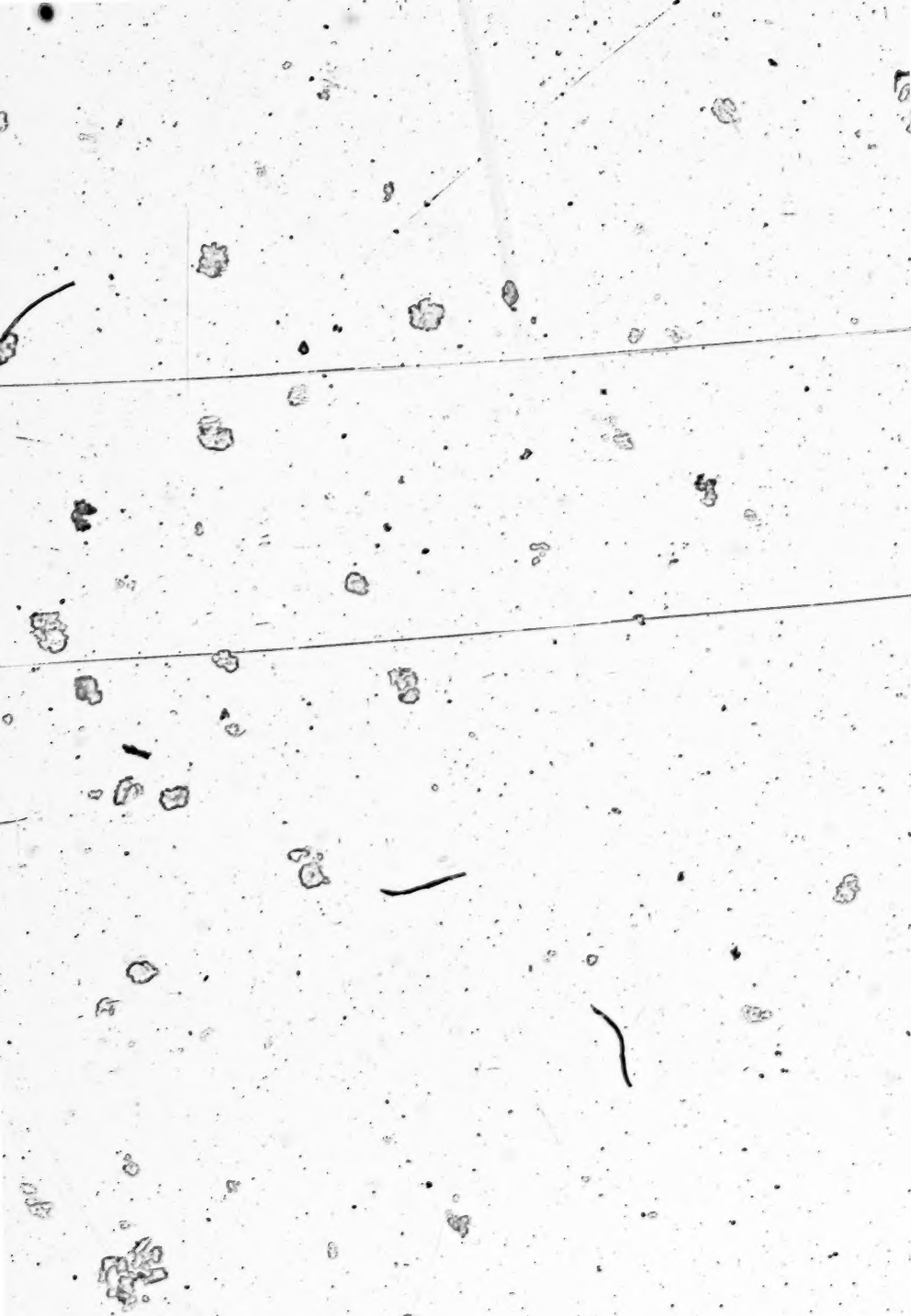
Mr. Chief Justice Hughes (dissenting):

I think that sound principle governing the exercise of our jurisdiction requires the dismissal of the writ. I see no reason to doubt that the Supreme Court of Minnesota held that the tax in question was laid in violation of the uniformity clause of the State Constitution. Not only is that shown, as it seems to me, from the court's discussion of that question, but it conclusively appears from the syllabus which definitely states that the tax is "violative of art. 9, § 1, of our state constitution". 205 Minn. 443. Minnesota requires that in all cases decided by the Supreme Court it shall give its decision in writing, "together with headnotes, briefly stating the points decided". Mason's Minn. Stat., Sec. 134. In obedience to the statute, the court has thus given explicitly in its syllabus its own deliberate construction of what it has decided.

The decision thus rested upon an adequate non-federal ground and in accordance with long-established doctrine we are without jurisdiction. *Fox Film Corporation* v. *Muller*, 296 U. S. 207, 210.

This is not a case where the record leaves us in uncertainty as to what has actually been determined by the state court. *Honeyman* v. *Hanan*, 300 U. S. 14, 23, 26; *State Tax Commission* v. *Van Cott*, 306 U. S. 511. Nor have there been supervening changes since the entry of the judgment. *Gulf, Colorado & Santa Fe Rwy. Co.* v. *Dennis*, 224 U. S. 503, 507; *Patterson* v. *Alabama*, 294 U. S. 600, 607. I find no warrant for vacating the judgment on either of these grounds.

The fact that provisions of the state and federal constitutions may be similar or even identical does not justify us in disturbing a judgment of a state court which adequately rests upon its application of the provision of its own constitution. That the state court may be influenced by the reasoning of our opinions makes no difference. The state court may be persuaded by majority opinions in this Court or it may prefer the reasoning of dissenting judges, but the judgment of the state court upon the application of its own constitution remains a judgment which we are without jurisdiction to review. Whether in this case we thought that the state tax was repugnant to the federal constitution or consistent with it, the judgment of the state court that the tax violated the state constitution would still stand. It cannot be supposed that the Supreme Court of Minnesota is not fully conscious of its independent authority to construe the constitution of the State, whatever reasons it may adduce in so doing. As the Minnesota court said in *Reed* v. *Bjornson*, 191 Minn. 254, 257, after referring to the question presented under the federal constitution, "Our interpretation of our own constitution is of course final".

The disposition of this case is directly within our recent and unanimous ruling in *New York City* v. *Central Savings Bank*, 306 U. S. 661. In that case, the Court of Appeals of New York had decided that a state statute was repugnant to the due process clause of the state constitution, that clause being the same as the due process clause of the Fourteenth Amendment which the court held had also been violated. 280 N. Y. 9, 10. We declined jurisdiction upon the ground that the judgment of the state court in applying the state constitution rested upon an adequate non-federal ground, despite the reliance upon our decisions.

Mr. Justice STONE and Mr. Justice ROBERTS join in this opinion.